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Supreme Court of the United States

OCTOBER TERM, 1961

No. 73

RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL UNIONS NOS. 128 AND 633, PETITIONERS,

vs.

LION DRY GOODS, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 27, 1961
CERTIORARI GRANTED MAY 8, 1961

SUPREME COURT OF THE UNITED STATES

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IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Joint Appendix

Civil No. 8199

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO,
WESTERN DIVISION

RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL UNIONS NOS. 128 AND 633, Plaintiffs,

v.

LION DRY GOODS, INC., and LASALLE'S, A Division of R. H. Macy & Co., Defendants.

DOCKET ENTRIES

4/15/59. Complaint filed. Summons issued. Two copies of summons and two copies of complaint to U. S. Marshal.

4/23/59. Summons returned, served 4/17/59, and filed. $4.20.

5/5/59. Application of defendants for extension of time to move, plead or answer to 5/22/59 filed. Mailed 5/5/59.

5/7/59. Order granting application of defendants for extension of time filed. FLK. Defendant granted until 5/22/59 to move, plead or answer. Copies 77d to Finley and Green.

5/19/59. Motion of Defendants to make definite and certain and to strike filed.

5/19/59. Memorandum in support filed. Copies of motion and memo. mailed 5/19/59.

5/28/59. Memorandum of plaintiff in response to motions of defendant to make more definite and certain and to strike filed. Mailed 5/27/59.

[fol. 2] 6/2/59. Memorandum of the Court filed. FLK. Motions to be sustained, in part and overruled in part. Plaintiffs may file an amended complaint within 20 days. Copies to Finley and Green.

6/2/59. Order sustaining defendant's motion requiring the complaint to be made definite and certain and that portion of the motion for order to strike from the complaint is overruled without prejudice filed. FLK. Copies 77d to Finley and Green.

6/19/59. Amended Complaint for Injunction filed. Copy mailed 6/18/59.

6/29/59. Answer to Amended Complaint filed. Mailed 6/29/59.

8/28/59. Notice to attend pre-trial conference 10/8/59, mailed.

9/18/59. Trial brief on behalf of defendants filed.

9/28/59. Trial brief on behalf of plaintiff filed.

10/7/59. Pretrial order that cause will be submitted on facts and briefs to be exchanged as follows, plaintiff's brief —10/16/59, deft's. brief—10/26/59, plaintiff's reply brief— 11/2/59, and cause is assigned for argument, November 6, 1959 at 11:00 A. M., and filed. FLK. Copies to Finley and Green.

10/15/59. Brief of Plaintiffs filed. Served 10/14/59.

10/26/59. Answer brief of defts. filed. Mailed 10/26/59.

11/2/59. Reply brief of plaintiffs filed. Mailed 10/30/59.

11/6/59. Clerk's minutes of proceedings filed. Trial to Court begun and concluded. Plaintiff granted leave to amend complaint. Cause submitted on stipulation, briefs and argument of counsel.

11/6/59. Stipulation of facts filed.

12/21/59. Memorandum opinion of the Court filed. FLK. Defendants to file findings of fact and conclusions of law within 15 days and plaintiffs to file amendments or additions 10 days thereafter. Copies to Finley and Green.

1/12/60. Findings of fact and conclusions of law of defendant lodged.

1/20/60. Order and judgment lodged.

[fol. 3] 1/29/60. Findings of fact and conclusions of law filed. FLK. Copies to Finley and Green.

1/29/60. Order and judgment filed and entered. FLK 16. Complaint is dismissed at plaintiff's costs. Copies 77d to Finley and Green.

IN UNITED STATES DISTRICT COURT

AMENDED COMPLAINT FOR INJUNCTION—Filed June 19, 1959

First Cause of Action

1. Plaintiffs are labor organizations with offices and headquarters at the address above listed and represent employees in industries affecting commerce for the purpose of collective bargaining.

2. Defendant Lion Dry Goods Co., Inc., an Ohio corporation, is engaged in operating a retail department store at the address above listed and is engaged in a business affecting commerce within the meaning of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. A. Sec. 151 et seq. Defendant LaSalle's, a Division of R. H. Macy & Co., a New York corporation, hereinafter referred to as LaSalle's, is engaged in operating a retail department store at the address above named, and is engaged in a business affecting commerce within the meaning of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. A. Sec. 151 et seq., hereinafter referred to as the Act.

3. This action is brought pursuant to Sec. 301 (a) and (b) of the Act.

4. Plaintiffs were the lawfully recognized collective bargaining representatives of employees of defendants for

many years prior to 1957 and were parties to collective bargaining contracts with defendants for many years prior to 1957. In 1957, plaintiffs undertook to negotiate new collective bargaining contracts with defendants but failed to [fol. 4] reach agreement. Plaintiffs thereupon went on strike against defendant LaSalle's and continued their dispute with defendant Lion Dry Goods Co., Inc., hereinafter referred to as Lion Store, until Dec. 24, 1958, as will be further set forth hereinafter.

5. On Dec. 24, 1958, plaintiffs agreed to end their strike against defendant LaSalle's and agreed to end their dispute with defendant Lion Store and as an integral part of such agreement, and in consideration of written promises and assurances given by defendants to the Toledo Labor-Management-Citizens Committee for the benefit of plaintiffs, under same date, gave assurances both to defendants and to the Toledo Labor-Management-Citizens Committee, which was engaged in attempting to work out a settlement and an agreement by and between the parties, that all strikes, picketing, boycotting, and similar activities would be ceased immediately. Plaintiffs, pursuant to such agreement, did immediately cease all such activities and have carried out all such assurances given on December 24, 1958, fully and completely to date.

6. In consideration of plaintiffs' agreement to immediately discontinue and terminate all strikes, picketing, boycotts, disputes and similar activities, defendants on December 24, 1958, executed certain documents setting forth acts to be performed by defendants and plaintiffs and delivered such documents to Msgr. Michael J. Doyle, chairman of the aforesaid Toledo Labor-Management-Citizens Committee. Plaintiffs thereafter formalized their agreement by giving assurances in writing to Msgr. Michael J. Doyle. The aforementioned documents, attached hereto and made a part hereof, are as follows:

Exhibit A—a true copy of letter of December 24, 1958, from defendant LaSalle's, signed by Michael Yamin, President, to Msgr. Michael J. Doyle.

Exhibit B—a true copy of attachment to letter of December 24, 1958, from defendant LaSalle's to Msgr. Michael J. Doyle, with exhibits thereto.

Exhibit C—a true copy of letter dated December 30, 1958, from plaintiffs to Msgr. Michael J. Doyle, formalizing [fol. 5] acceptance of terms and conditions contained in Exhibits A and B.

Exhibit D—a true copy of letter of December 24, 1958, from defendant Lion Store, signed by Donald Ross, President, to Msgr. Michael J. Doyle.

Exhibit E—a true copy of attachment to letter of December 24, 1958, from defendant Lion Store to Msgr. Michael J. Doyle. Exhibits to such attachment are the same in every respect as those set forth in Exhibit B above.

Exhibit F—a true copy of letter dated December 30, 1958, from plaintiffs to Msgr. Michael J. Doyle, formalizing acceptance of terms and conditions contained in Exhibits D and E.

The aforesaid mutual agreements, assurances, and declarations of plaintiffs and defendants constituted contracts within the meaning of Sec. 301 (a) and (b) of the Act. In such contracts, defendants agreed that any majority decision and order of the Labor-Management-Citizens Committee panel empowered to pass upon disputes arising under such agreements would be final and binding.

7. Such contracts and documents, contained agreements by defendants that nothing would preclude plaintiffs as employee representatives from communicating with employees, provided such communication was on the employees' non-working time and in no way interfered with operation of the business of defendants. Defendants thereupon interfered with such rights in violation of the agreements of December 24, 1958, plaintiffs thereafter protested such interference, and requested and petitioned the Labor-Management-Citizens Committee panel to hear, decide, and arbitrate such case, dispute, or controversy and render a decision thereon with regard to what rights plaintiffs had under the aforesaid agreements of December 24, 1958.

8. A panel of the Labor-Management-Citizens Committee under the chairmanship of Msgr. Michael J. Doyle thereafter held a hearing on such case or dispute on March 5, 1959, and on March 12, 1959, transmitted its decision to the parties, holding, inter alia, that plaintiffs should have [fol. 6] freedom to contact employees during recess or lunch periods in employee cafeterias as well as in public cafeterias. Such decision further said, "It must be viewed as a breach of faith on the part of management to create a place where union organizers cannot solicit union membership."

9. Defendants thereafter requested reconsideration of the decision of the Labor-Management-Citizens panel with regard to the decision above mentioned and on April 7, 1959, the aforesaid Labor-Management-Citizens panel, by Msgr. Michael J. Doyle, chairman, reaffirmed its decision of March 12, 1959. A true copy of a letter from Msgr. Doyle to counsel for defendants is attached hereto and made a part hereof as Exhibit G.

10. Defendants have openly, wantonly, and deliberately refused to obey such decision and order of the Labor-Management-Citizens panel and have denied plaintiffs the rights accorded them by the aforesaid decision and have announced their intention to continue to deny plaintiffs such rights, regardless of any decision of the Labor-Management-Citizens panel, all in violation of defendants' agreement of December 24, 1958, to accept any decision and order of the Labor-Management-Citizens panel as final and binding.

Second Cause of Action

11. Plaintiffs repeat and reallege each and every allegation of paragraphs numbered 1, 2, 3, 4, 5, and 6 only with respect to such allegations as pertain to defendant LaSalle's. No part of this second cause of action has any reference or application to the defendant Lion Store.

12. At LaSalle's, two employees named Loretta Thal and Goldie McGinnis filed grievances pursuant to the aforesaid agreements of December 24, 1958, alleging violations

of their rights of restoration to the jobs they held prior to the beginning of the strike in 1957 and such grievances were processed in accordance with such agreements, were presented by plaintiffs, and were heard by the Labor-Manage-
[fol. 7] ment-Citizens panel on March 5, 1959. Such grievances were filed with officials of defendant LaSalle's after February 2, 1959, and alleged in substance that LaSalle's was in violation of the settlement agreement of December 24, 1958, in not restoring Thal and McGinnis to the jobs they held prior to November 23, 1957.

13. On March 12, 1959, the Labor-Management-Citizens panel ruled that employees Thal and McGinnis should be restored to their former positions by defendant LaSalle's and such decision was communicated to the parties, including plaintiffs as representatives of employees Thal and McGinnis.

14. Defendant LaSalle's has failed, refused, and neglected to accept and honor the aforesaid decision of the Labor-Management-Citizens panel as final and binding, all in violation of the agreement of December 24, 1958.

Wherefore, plaintiffs pray for judgment as follows:

On the First Cause of Action

Plaintiffs pray for an order of this Court restraining and enjoining defendants from violating the agreements of December 24, 1958, by refusing to accept and honor the decision of the Labor-Management-Citizens panel as final and binding and from interfering with rights granted plaintiffs by the aforesaid decision of the Labor-Management-Citizens panel and from further denying plaintiffs such rights of communication with employees of defendants in employee cafeterias as has been granted by the aforesaid decision of the Labor-Management-Citizens panel.

On the Second Cause of Action

Plaintiffs pray for an order of this Court restraining and enjoining defendant LaSalle's from violating the agreements of December 24, 1958, by refusing to abide by the

decision of the Labor-Management-Citizens panel ordering and directing restoration of Loretta Thal and Goldie McGinnis to their prior jobs with defendant LaSalle's.

Joseph E. Finley, Attorney for Plaintiffs.

[fol. 8]

EXHIBIT A TO AMENDED COMPLAINT

(Copy)

THE LASALLE & KOCH COMPANY

Toledo, Ohio

December 24, 1958

Msgr. Michael Doyle, Chairman,
Labor-Management-Citizens Committee,
Toledo, Ohio

Dear Sir:

In accordance with previous commitments made to you on our behalf, we hand you herewith a statement of understanding, with exhibits, which set forth therein the basis on which the heretofore existing dispute between the Retail Clerks International Association, its Locals No. 633 and No. 128, and our company is to be fully and finally resolved.

The conditions to be performed and met by us are, of course, subject to and conditioned upon the receipt by your organization of guarantees from the respective labor organizations to make the principles enumerated herein completely effective.

We are fully aware that the ultimate and complete success of your efforts in this endeavor will depend upon the good faith which is necessarily a part of any representations made to you. It is in this spirit that we are pleased to hand you this statement of intent with its necessary assurances.

Sincerely yours,

/s/ MICHAEL YAMIN

Michael Yamin,
President.

EXHIBIT B TO AMENDED COMPLAINT

1. Employees of Lasalle's, who have been absent due to the strike, will be re-instated without discrimination because of any strike activities and without loss of seniority [fol. 9] provided they make application for reinstatement in the form and manner provided for by the employer within fifteen days of receipt of notice from the employer.

2. All such employees who have complied with the provisions of Paragraph 1 above, will be returned to work not later than February 2, 1959, as scheduled by the Company, in their former position classifications if vacant or in positions comparable in duties and earning opportunities.

3. It is understood that returning strikers will devote their best efforts to their work and to serving the customers of Lasalle's, recognizing that stability of employment depends upon the success of the business.

4. Lasalle's will warrant to the L-M-C that the Company will not reduce rates of pay presently in effect or withdraw or reduce employee benefit programs currently provided. This assurance includes all improvements offered by the Company through the L-M-C on November 15th, 1957, which are already in effect. No employee will be discriminated against, by reason of Union activities, membership or non-membership. All employees will continue to have job security and no employee will be discharged except for just cause. Wage schedules currently in effect are appended as Exhibit A. Copies of hours and working conditions and other existing benefits, as requested by L-M-C are attached as Exhibit B.

5. Neither the Company nor the Union will interfere with the employee's right to join or not to join a union, as provided and guaranteed by the Labor-Management-Relations Act. Nothing contained herein is to be construed as giving recognition to the union unless at some future time within the discretion of the union, the union is certified as having been chosen by a majority of employees in a single store unit election conducted by the National Labor Relations Board.

6. The Union agrees that it will not request bargaining rights unless it proves its right to represent the employees [fol. 10] as provided in Paragraph 5 above; nor will the employer recognize any union except upon certification by the N.L.R.B.; nor will the Company file a petition for election unless a claim for representation is made upon the employer. Nothing herein shall preclude an employee representative from entering areas of the store which are open to customers; or from communicating with employees, provided such communication is on the employee's non-working time and in no way interferes with the operating of the business.

7. Any individual employee who may have a grievance involving an interpretation or application of or arising under the terms of this understanding with the L-M-C, and who has presented such grievance to his supervisor and the Personnel Department without reaching a satisfactory solution, may take his case to the chairman of the L-M-C who in turn shall refer the case to a panel of the L-M-C. whose majority decision and order shall be final and binding. The panel shall render its decision and order within fifteen days after the grievance has been submitted to it. The procedure regulating the hearing of the grievance by the L-M-C panel shall be determined by the panel.

8. The Union will agree that immediately upon receipt of this statement of understanding by the Toledo Labor-Management-Citizens Committee it will cease all picketing, boycotting or other interference with the business of Lasalle's, or R. H. Macy & Co., Inc. wherever located. The Union, the strikers, and the Company shall withdraw forthwith all petitions, unfair labor practice charges and litigation before the National Labor Relations Board and the Courts and further agree not to institute in the future any litigation involving or arising out of the instant dispute. The Union and the Employer shall execute mutually satisfactory releases, releasing and discharging each other, the International Union, the local unions involved, and representatives of the union in their representative or individual capacity, labor papers, and all other labor organizations or their representatives who acted in concert or

[fol. 11] cooperation in connection with the dispute, from any and all claims, demands, causes of action, of whatever nature or description arising out of the labor dispute, including but not limited to the strikes, picketing, boycotting, and all other activities which may have taken place up to the present date.

9. This understanding shall become effective in accordance with the letter of transmittal dated December 24, 1958.

LASALLE & KOCH DIVISION OF THE R. H. MACY CO., INC.,

/s/ By: MICHAEL YAMIN.

(Exhibit A)

WAGE SCHEDULE FOR SEWERS AND FITTERS

Lamson's Lasalle's Lion Store

(a) The normal work week for full-time garment workers shall be forty (40) hours to be worked in five (5) days.

(b) The straight time weekly wage rates for experienced full-time garment workers covered by this schedule shall be as set forth below. Short-hour employees shall receive a proportionate share depending upon the number of hours actually worked in any week.

SEWERS:	Effective 11/1/57	Effective 9/1/58
First 6 months	$ 49.30	$ 52.10
6 to 12 months	51.55	54.35
12 to 24 months	54.85	57.60
After 24 months	59.30	62.10
FITTERS:		
First 6 months	$ 57.30	$ 60.10
6 to 12 months	58.80	61.60
After 12 months	61.80	64.60

[fol. 12] Promotion for fitters shall be made from the seamstress list provided the person is capable and has ability to perform the work.

To further the interest in the needle trades, it is desirable to employ students from the Vocational School on the cooperative basis; that is to say, the student will go to school one week and work in the alteration room the next week. The stores and the school will try to work out a satisfactory arrangement which will guarantee the proper and adequate education of the student, and fit her for a needle trades occupation when her high school curriculum is finished.

Each store may employ two apprentices for each five (5) regular members of its staff. To clarify this point, if a store were to have twelve (12) sewers and three (3) fitters, it would be permissible to employ a total of three (3) apprentices each week.

During this apprenticeship period and while the pupil is still in school, the salary shall follow the same progression as other cooperatives employed in the store.

No apprentice will be subject to lay-off on a seniority basis. Every apprentice will hold her job on an alternative week basis regardless of seasonal changes in the industry, so long as the five-to-two ratio is maintained.

Apprentices on an alternate week basis will not accrue any seniority. Upon graduation they will be employed on the same basis as any new person.

WAGE SCHEDULE FOR SELLING AND NON-SELLING EMPLOYEES GENERALLY

Lamson's Lasalle's Lion Store

(a) The normal work week for full-time sales employees stockroom employees and office employees shall be forty (40) hours to be worked in five (5) days.

(b) The straight time weekly wage rate for full-time employees covered by this schedule shall be as set forth below. Short-hour employees shall receive a proportionate share depending upon the number of hours actually worked in any week.

[fol. 13]

SELLING:

Sales Clerks, Women	Effective 11/1/57	Effective 9/1/58
First 2 months	$ 42.80	$ 45.60
2 to 4 months	45.05*	47.85*
4 to 6 months	47.05*	49.85*
6 to 12 months	48.30*	51.10*
After 12 months	49.80*	52.60*
Sales Clerks — Men		
First 3 months	46.80	49.60
3 to 12 months	50.80*	53.60*
After 12 months	54.80*	57.60*

NON-SELLING:

Office Help	Effective 11/1/57	Effective 9/1/58
Wrappers-Cashiers-Receiving and Stock — Women		
First 2 months	43.80	46.60
2 to 4 months	46.05	48.85
4 to 6 months	48.05	50.85
6 to 12 months	49.30	52.10
After 12 months	50.80	53.60
Receiving Reserve Stockmen and Checkers — Men		
First 2 months	45.80	48.60
2 to 4 months	47.80	50.60
4 to 6 months	50.05	52.85
6 to 12 months	52.05	54.85
12 to 18 months	54.30	57.10
After 18 months	56.80	59.60
Receiving Openers and Platform Clerks — Men		
First 2 months	47.80	50.60
2 to 4 months	51.05	53.85
4 to 6 months	54.05	56.85
6 to 12 months	56.30	59.10
After 12 months	58.80	61.60

*Plus a commission of 1% on sales made by the individual during the week.

[fol. 14]

Telephone Operators — Women

First 3 months	44.80	47.60
3 to 12 months	47.05	49.85
12 to 24 months	50.30	53.10
After 24 months	51.80	54.60

WAGE SCHEDULE FOR STRAIGHT COMMISSION EMPLOYEES

(Other than Shoe Clerks)

Lamson's Lasalle's Lion Store

(a) The normal work week for full-time employees covered by this schedule shall be forty (40) hours to be worked in five (5) days.

(b) The commission rate for sales clerks in furniture, floor coverings, men's clothing, major appliances and radios shall be five and one-half (5½%) percent on net sales. Such employees shall receive a guarantee of Three Hundred Dollars ($300.00) monthly for a four (4) week pay period and Three Hundred Seventy-five Dollars ($375.00) monthly for a five (5) week pay period. The monthly guarantee shall be advanced in equal weekly amounts of Seventy-five Dollars ($75.00). Commissions shall be computed and paid once a month with no deficit. Merchandise that has been in the customer's hands for forty-five (45) days and is returned will not be charged against such employees. Such employees will be given an itemized statement of the returns giving the date, amount and customer's name.

(c) The commission rate for sales clerks in the dress department, cloth coats and suits, where straight commission is paid, shall be the same as it has been in the past. Such employees shall receive a weekly guarantee with no deficit as follows:

[fol. 15]

		Add to Gross Earnings 11/1/57	Add to Gross Earnings 9/1/58
First 2 months	$ 36.00	$ 4.80	$ 7.60
2 to 4 months	38.25	4.80	7.60
4 to 6 months	40.25	4.80	7.60
6 to 12 months	41.50	4.80	7.60
After 12 months	41.50	8.30	11.10

(After 12 months, those receiving more than $41.50 per week but not over $43.00 per week beginning November 1, 1957, shall have $7.80 added to their gross earnings, and beginning September 1, 1958, shall have $10.60 added to their gross earnings. After 12 months, those receiving more than $43.00 per week beginning November 1, 1957, shall have $7.30 added to their gross earnings, and beginning September 1, 1958, shall have $10.10 added to their gross earnings.)

Merchandise that has been in the customer's hands for ninety (90) days and is returned will not be charged against such employees. Such employees will be given an itemized statement of the returns giving the date, amount and customer's name.

(d) If said guarantee is not earned over a period of ninety (90) days the employee shall be subject to dismissal.

(e) Commission people will be paid time and a half (1½) based on the guarantee for inventory and overtime work. In the case of selling overtime, the overtime shall be applied as follows: One-half (½) the Overtime payment shall be applied to the weekly guarantee and one-half (½) applied to gross earnings. In the case of non-selling overtime work, the overtime payment shall be added to gross earnings.

[fol. 16]

WAGE SCHEDULE FOR CUSTOMER SERVICE BUREAU FLOOR REPRESENTATIVES

Lamson's Lasalle's Lion Store

(a) The normal work week for full-time customer service bureau floor representatives shall be forty (40) hours to be worked in five (5) days.

(b) The straight time weekly wage rate for full-time employees covered by this schedule shall be as set forth below. Short-hour employees shall receive a proportionate share depending upon the number of hours actually worked in any week.

	Effective 11/1/57	Effective 9/1/58
First 6 months	$ 49.40	$ 52.10
6 to 12 months	51.05	53.85
12 to 18 months	55.30	58.10
After 18 months	60.30	63.10

WAGE SCHEDULE FOR PUBLICITY AND DISPLAY DIVISION EMPLOYEES

Lamson's Lasalle's Lion Store

(a) The normal work week for full-time technical workers in the Publicity and Display Division, including copywriters, artists, window trimmers, interior trimmers, fixture men and layout assistants, shall be forty (40) hours to be worked in five (5) days.

(b) The straight time weekly wage rate for full-time employees covered by this schedule shall in no event be less than set forth below. Short-hour employees shall receive a proportionate share depending upon the hours actually worked in any week.

[fol. 17]

	Effective 11/1/57	Effective 9/1/58
First 3 months	$ 45.80	$ 48.60
3 to 6 months	47.80	50.60
6 to 9 months	50.05	52.85
9 to 12 months	52.05	54.85
12 to 15 months	54.05	56.85
15 to 18 months	56.05	58.85
18 to 21 months	58.30	61.10
21 to 24 months	60.30	63.10
After 24 months	64.30	67.10

WAGE SCHEDULE FOR SHOE CLERKS

Lamson's Lasalle's Lion Store

(a) The normal work week for full-time shoe clerks shall be forty (40) hours to be worked in five (5) days.

(b) The straight time weekly wage rate for full-time employees covered by this schedule, except those employees covered by paragraph (c) below, shall be as set forth. Short-hour employees shall receive a proportionate share depending upon the number of hours actually worked in any week.

Shoe Clerks — Women	Effective 11/1/57	Effective 9/1/58
First 3 months	$ 43.80	$ 46.60
3 to 12 months	46.05	48.85
12 to 24 months	48.30	51.10
After 24 months	50.80	53.60
Shoe Clerks — Men		
First 3 months	47.80	50.60
3 to 12 months	51.05	53.85
12 to 24 months	54.30	57.10
After 24 months	58.30	61.10

[fol. 18] (c) The commission rate for those shoe clerks being paid on a straight commission basis shall be seven

(7%) percent on net sales. Such employees shall receive a weekly guarantee with no deficit as follows:

Shoe Clerks — Women		Add to Gross Earnings 11/1/57	Add to Gross Earnings 9/1/58
First 2 months	$ 36.00	$ 4.80	$ 7.60
2 to 4 months	38.25	4.80	7.60
4 to 6 months	40.25	4.80	7.60
6 to 12 months	41.50	4.80	7.60
After 12 months	41.50	8.30	11.10

(After 12 months, those receiving more than $41.50 per week but not over $43.00 per week beginning November 1, 1957, shall have $7.80 added to their gross earnings, and beginning September 1, 1958, shall have $10.60 added to their gross earnings. After 12 months, those receiving more than $43.00 per week beginning November 1, 1957, shall have $7.30 added to their gross earnings, and beginning September 1, 1958, shall have $10.10 added to their gross earnings.)

Shoe Clerks — Men		Add to Gross Earnings 11/1/57	Add to Gross Earnings 9/1/58
First 3 months	$ 40.00	$ 4.80	$ 7.60
3 to 12 months	44.00	4.80	7.60
After 12 months	46.50	8.30	11.10

(After 12 months, those receiving more than $46.50 per week but not over $48.00 per week beginning November 1, 1957, shall have $7.80 added to their gross earnings, and beginning September 1, 1958, shall have $10.60 added to their gross earnings. [fol. 19] After 12 months, those receiving more than $48.00 per week beginning November 1, 1957, shall have $7.30 added to their gross earnings, and begin-

ning September 1, 1958, shall have $10.10 added to their gross earnings.)

1. If the stated guarantee is not earned over a period of ninety (90) days the employee shall be subject to dismissal.

2. Merchandise that has been in the customer's hands for ninety (90) days and is returned will not be charged against sales persons. Shoe Clerks will be given an itemized statement of the returns, giving the date, amount and customer's name.

3. Straight commission people will be paid time and a half (1½), based on the guarantee for inventory and overtime work. In the case of selling overtime, the overtime shall be applied as follows: One-half (½) the overtime payment shall be applied to the weekly guarantee and one-half (½) applied to gross earnings. In the case of non-selling overtime work, the overtime payment shall be added to gross earnings.

(Exhibit B.)

COMPANY PERSONNEL POLICY AND PROGRAM

1. Seniority will apply to all regular employees after two (2) months of service from date of employment in adding to, or reducing the force as well as promotions.

2. There are four (4) classifications of employees, designated as follows:

(a) Regular full-time employees

(b) Regular short-hour employees

(c) Extra employees

(d) Casual employees

3. The above cited classifications are as follows:

(A) A regular full-time employee is one who has been employed to work forty (40) hours per five-day week and an employee continuously so employed at least two (2) months is considered a regular full-time employee.

[fol. 20] (B) A regular short-hour employee is one who has been employed to work at least twenty (20) hours per week but less than forty (40) hours per five-day week and any employee continuously so employed for at least two (2) months is considered a regular short-hour employee.

(C) An extra employee is one employed for promotions, sales, seasonal events, vacation periods, etc.

(D) A casual employee is one employed for temporary work, including the Christmas season—thus any employee hired during the period October 15th to December 15th shall be considered a casual employee unless and until such employee is retained after January 15th of the subsequent year following the Christmas season. In such event, the retained employee will be classified under (A) (B) (C) or (D) and his seniority will begin two months after the date of his hiring.

4. Regular full-time employees will have seniority over regular short-hour employees and regular short-hour employees will have seniority over extra employees.

5. If the Company reduces the weekly hours of work of a full-time employee, such affected employee will have the first consideration for the full-time position in the department, in which the hours were reduced, when that full-time position is again available upon a full-time basis.

6. If, however, a full-time employee, whose hours have been reduced, elects to transfer to another department to obtain full-time employment, in accordance with such employee's seniority rights, then such employee will be eligible to return to the department in which the hours were reduced, if such is completed within a two (2) months period from the time the reduction in hours became effective, and then in accordance with the schedule of hours in effect for the previously held position.

7. In the application of this Company Personnel Policy and Program the employee's employment record with the Company will be controlling.

[fol. 21] 8. In the event layoffs occur, the classifications (A) (B) (C) will be followed in reverse order until no further layoffs are necessary and in recalling laid-off employees the last employee laid off will be the first to be recalled and this method will continue until all necessary laid-off employees are recalled.

9. In promotions, transfers, and/or recalls, Store conditions with respect to available work, and the adaptability or qualifications of the employee involved will be given prior consideration.

10. Promotions or transfers to other towns or to other stores will be optional on the part of the employee concerned and there will be no discrimination against the employee, should he or she decline such transfer or promotion.

11. Seniority will be broken only for the following reasons:

(A) Voluntary termination of employment by the employee.

(B) Discharge for just cause.

(C) Failure to notify the Personnel Office of the Company of intention to return to work within seventy-two (72) hours after notice of recall has been sent by the Company, by registered mail, return receipt requested, to the laid-off employee to such employee's last known address on file with the Company.

(D) Failure to report absence from work within three (3) working days without reasonable excuse.

(E) Overstaying leave of absence without approval of the Company.

(F) Accepting other employment while on leave of absence.

(G) Accepting severance pay.

(H) Voluntary Retirement or Retirement under the Company's Pension and/or Retirement Plan.

[fol. 22] (I) Continuous layoff of four (4) consecutive months with extension granted in the event of illness or injury which prevents the employee from working at the time of recall.

(J) Such extensions shall be limited to four (4) months.

12. The Company will maintain complete seniority lists. An employee will, upon request, be informed of his seniority status.

13. All employees on reporting for work and at quitting time are to punch the time clock or time record within the fifteen (15) minute period prior to his or her starting time and within the fifteen (15) minute period after his or her quitting time, without overtime compensation.

14. Employees requested to report for work prior to or after the specified time stated above, will be paid for all such time worked before his or her scheduled starting time or after his or her scheduled quitting time except that no employee will be paid for overtime unless the Superintendent or an individual designated by the Company shall approve requisitions.

15. All employees are to record their time on time clocks or other time records. If there is any question as to the length of time any employee works, the time card or time record will be made available to the employee.

16. Employees requested to report for work and not given such work when reporting, will be paid for at least four (4) hours of employment unless previously notified by telephone, telegraph or otherwise not to report.

17. The hourly rates, commissions, and the hours of the work-week set forth in Exhibit A will not be reduced. Whether mentioned in such schedules or not, the wage rates contained therein shall be minimum.

18. Any commissions, bonuses, or p.m.s. that may be paid to employees are not to be considered part of the employee's minimum wages.

[fol. 23] 19. Mail and telephone orders will be distributed to the sales people in the departments in an equitable manner.

20. Sales made by buyers or assistant buyers in furniture, rugs, major appliances, radio and television will be turned over to the next-up regular salesman. In the other departments, sales made by the buyers or assistant buyers will be turned over to the regular sales people on the next-up basis. In lieu of this method, the department may elect a pooling method for such sales, less returns, to be divided equally among the regular sales force.

21. Employees in selling and indirect selling departments who because of their duties are required to be in the stores before the stores are open to customers and after the closing of the stores to customers, may have their hours so scheduled that they shall start fifteen (15) minutes before the stores are open to customers in the morning and leave five (5) minutes after the stores are closed to customers in the afternoon.

22. A rest period of fifteen (15) minutes will be granted between the opening hour and the lunch period and between the lunch and closing.

23. Each employee will be notified of his work schedule in advance and any employee absent, because of illness, on a day other than his day off will not make up the absent day by working on the scheduled day off without the approval of the Personnel Office and then only at straight time.

24. The overtime rate for regular short-hour employees will not be paid until the employee exceeds the number of hours in the daily or weekly full time work schedule for regular full-time employees in his classification. The overtime rate for regular full-time employees will be paid when the employee exceeds his daily full-time work schedule.

25. There will be no overtime worked in any department where regular full-time or regular short-hour employees are laid off or working short hours, except when it is neces-
[fol. 24] sary to provide for peak periods of the day. Extra

employees will not be hired to work other than store hours at work regularly done by regular employees to avoid overtime pay, but the regular employees will have the preference of the overtime work.

26. All overtime will be paid for at the rate of time and one-half (1½) for all work performed in excess of the normal work-week, except on Sundays and holidays and the schedules attached for straight commission people. All overtime will be paid for and in no event will time off be granted in lieu of payment for overtime.

27. Double time will be paid for work on Sundays or any of the following holidays: New Year's Day, Thanksgiving Day, Christmas Day, Decoration Day, Fourth of July, and Labor Day (in the event of any of these days falling on a Sunday, the following Monday will be observed), except for watchmen. If a regular employee has worked the day before a holiday and the day after a holiday, he is to be paid for the holiday; or if he works before the holiday and is willing to work the day after the holiday, but is not called, he shall be paid for the holiday.

28. All inventory work done before or after scheduled hours will be paid for at the rate of time and one-half (1½).

29. All meetings called by the Company for employees will be paid for at overtime rates if attendance is compulsory, except when said meetings are held during regular store hours, and except when meetings are called before or after store hours for the purpose of instruction and/or fashion shows when straight time is to be paid. No production work is to be done during the period when such straight-time rate is being paid.

30. All time spent by straight commission employees manning booths at home or sport shows, held any place outside of the stores, will be considered non-selling time and pay for such time will be based on average earnings. Hours before or after the regular store hours will be paid for at time and one-half (1½) the average hourly earnings.

[fol. 25] 31. Leave of absence with right to seniority upon return to work the same as he was rated before taking such leave may be granted any regular employee at the discretion of the Company. If said leave of absence is granted for any other reason than illness, said leave of absence will be limited to thirty (30) days, except in unusual cases.

32. Three (3) days' leave will be granted with full pay in the event of a death in the immediate family of any regular employee. By immediate family is meant child, father, mother, brother, sister, or any relative living in the home of the employee or with whom the employee is living.

33. The Company will not discharge any employee except for just cause.

34. In cases of inefficiency the employee will receive prior warning and be given an opportunity to improve prior to final action. There will be a minimum period of thirty (30) days between the warning-notice date and the date of actual action upon the part of the store, except in unusual cases.

35. In the event of termination of employment due to lack of work or discharge, regular employees after six months of service and up to two years of service will receive termination pay of one week's basic salary or its equivalent; regular employees after two years of service will receive two weeks' basic salary or its equivalent and thereafter an additional week's basic salary or its equivalent for each additional year of service up to a total of five weeks will be given. This provision is not to apply to employees discharged for dishonesty or insobriety, nor to employees discharged for misconduct involving immorality.

36. The 1959 vacation schedule for employees will be as follows:

(A) Employees with eight (8) consecutive calendar months of service will receive one (1) week of vacation with pay based upon 2% of the employee's gross earnings for the first eight (8) months of employment.

[fol. 26] (B) Employees with eighteen (18) consecutive calendar months of service will receive one (1) week

and three (3) days of vacation with pay based upon 3% of the employee's gross earnings for the fifty (50) weeks of the preceding calendar year.

(C) Employees with twenty-one (21) consecutive calendar months service will receive two (2) weeks of vacation with pay based upon 4% of the employee's gross earnings for the fifty (50) weeks of the preceding calendar year.

(D) Employees with ten (10) consecutive years of service will receive three (3) weeks of vacation with pay based upon 6% of the employee's gross earnings ~~for the fifty (50)~~ weeks of the preceding calendar year.

(E) Employees with twenty-five (25) consecutive years of service will receive four (4) weeks of vacation with pay based upon 8% of the employee's gross earnings for the fifty (50) weeks of the preceding calendar year.

(F) Employees will be eligible for the above mentioned vacations on the anniversary date of their employment, but such vacation shall be taken (except by permission of the Company) during the period May 1 through August 31, of each year.

(G) Consecutive calendar months and/or consecutive years shall be used in accordance with and subject to the contents of Paragraph 11 subsection "(A)" through "(J)."

(H) Employees who have completed eight (8) calendar months of continuous employment and who are laid off due to lack of work, or who quit voluntarily, will receive such proportionate vacation pay as may be due them based upon their length of service with the Company.

[fol. 27] (I) The allocation and/or selection of available vacation time will be upon the basis of seniority in each department.

(J) Vacation time up to and including three (3) weeks shall be consecutive, if desired, by the eligible employee. Additional vacation time, which may be due eligible employees, shall be taken at a time mutually agreed upon by the Company and the affected employee.

(K) In the event a legal holiday occurs during a vacation of any employee, said employee will be allocated an additional day of paid vacation to be effective immediately preceding the first day of said employee's vacation or immediately following the final day of said employee's vacation.

(L) Employees vacation pay as may be due will be paid in advance but in no event later than the employee's final day of work immediately preceding the actual vacation time.

(M) Employees whose vacation pay is reduced substantially due to absences from work by virtue of illness, injury or other valid reason, may, at their option, elect to take vacation time off upon the basis of one (1) day for each Ten Dollars ($10.00) or major fraction thereof.

37. A day's pay for a holiday shall be defined as an average day's earnings for the employee.

For employees on straight salary and commission, the base pay portion of average earnings will be paid for the holiday on the pay day following the holiday. Commission earnings for the employees described above will be computed and paid on the basis of an average day's commissions earnings in the previous month and will be paid on the pay day following the holiday or at the regular commissions pay period following the holiday.

For employees on straight commission, holiday pay will be based on one-fifth (1/5) of the weekly average earnings for the previous year.

[fol. 28] 38. The presently-in-effect employee discounts will continue in effect. Four (4) times a year a discount of not less than fifteen (15) per cent will be granted to all

employees on merchandise purchased in the store for their own personal use or the use of their dependents. The Company will set the date for such special discount and will give the employees six (6) days' notice prior to said sale, except that no discount will be granted on food, food products, drugs, cigarettes, or such items as may be exempted by the Company. Such Company exemptions will not be used arbitrarily to defeat the possibility of employee discounts. Employees will at all times receive a discount of twenty (20) per cent on merchandise used to conform to the dress regulations required by the Company. Such discount items include the following:

(A) For female employees: dresses, suits, sweaters, blouses, skirts, dress goods, shoes, hosiery, neckwear, smocks, and belts.

(B) For male employees: shirts, suits, shoes, hose, work clothing, neckwear, and belts.

39. Employees who, in accordance with established Company policy for given departments, use their privately owned automobiles in the business of the Company shall be compensated at the rate of eight cents (8¢) per mile.

40. The Company will provide minimum insurance coverage as follows:

(A) *Life Insurance*: After the completion of six months of continuous service, employees working 20 to 29 hours weekly, $1500 life and $1000 accidental death; those working 30 to 36 hours weekly, $2000 life and $1500 accidental death; those working 37 or more hours weekly, $3000 life and $2000 accidental death.

(B) *Sick and Accident Insurance*: After the completion of two months of continuous service, weekly sickness and accident benefits up to $28 for disability resulting from non-occupational injury or illness [fol. 29] for a period of thirteen weeks beginning with the first day of injury and the eighth day of illness.

(C) *Hospital and Surgical Insurance*: After the completion of two months of continuous service, hos-

pital and surgical expenses incurred by an employee for himself and for his dependents will be reimbursed according to the following schedule:

1. Room and Board charges up to $15 per day for 70 days for the employee and room and board charges up to $12 per day for 70 days for dependents.
2. Surgical expenses not to exceed $200 according to a "schedule of surgical operations."
3. Hospital maternity benefits up to 10 times the daily rate plus obstetrical services in the amount of $50 for a normal delivery, $100 for an abnormal delivery, and $25 in case of miscarriage.
4. Hospital extras up to 20 times the daily rate.

The entire cost of this insurance coverage will be fully paid by the Company.

41. Supper money of $1.50 cash will be paid in accordance with current store practice.

42. The Company will furnish, clean and launder all aprons, uniforms and other garment required by the Company.

[fol. 30]

EXHIBIT C TO AMENDED COMPLAINT

December 30, 1958

Right Reverend Michael J. Doyle
1933 Spielbusch Avenue
Toledo, Ohio

Most Reverend Sir:

In order to make operative Lasalle and Koch's commitments, set forth in the Statement of Understanding and attached Exhibits, transmitted to you, Monsignor Doyle, on December 24, 1958, we herewith agree to the conditions and guarantees of the Statement of Understanding. Attached Exhibits are subject to proofreading to assure conformity with applicable provisions of the expired contract and November 15, 1957 offer through L. M. C.

We agree that the success of the undertaking and stability of labor relations depend upon the good faith of the parties. Such assurances are granted on behalf of the unions.

Please accept our deep expression of gratitude for your conscientious and constructive efforts in the settlement of the dispute.

Respectfully yours,

RALPH HAMILTON, *Secy.-Treas. Local No. 633.*

THELMA HAAS, *Sec'y.-Treas. Local No. 128*

SL:kw
att.

[fol. 31]

EXHIBIT D TO AMENDED COMPLAINT

THE LION DRY GOODS CO.

Toledo, Ohio.

Msgr. Michael Doyle, Chairman,
Labor-Management-Citizens Committee,
Toledo, Ohio

Dear Sir:

In accordance with previous commitments made to you on our behalf, we hand you herewith a statement of understanding, with exhibits, which set forth therein the basis on which the heretofore existing dispute between the Retail Clerks International Association, its Locals No. 633 and No. 128, and our company is to be fully and finally resolved.

The conditions to be performed and met by us are, of course, subject to and conditioned upon the receipt by your organization of guarantees from the respective labor organizations to make the principles enumerated herein completely effective.

We are fully aware that the ultimate and complete success of your efforts in this endeavor will depend upon the good faith which is necessarily a part of any representations made to you. It is in this spirit that we are pleased to hand you this statement of intent with its necessary assurances.

Very truly yours,

DONALD ROSS,

Donald Ross, *President*
The Lion Store.

December
Twenty-fourth
1958

[fol. 32]

Exhibit E to Amended Complaint

1. The Lion Store will warrant to the L-M-C that the Company will not reduce rates of pay presently in effect or withdraw or reduce employee benefit programs currently provided. This assurance includes all improvements offered by the Company through the L-M-C on November 15th, 1957, which are already in effect. No employee will be discriminated against, by reason of Union activities, membership or non-membership. All employees will continue to have job security and no employee will be discharged except for just cause. Wage schedules currently in effect are appended as Exhibit A. Copies of hours and working conditions and other existing benefits, as requested by L-M-C are attached as Exhibit B.

2. Neither the Company nor the Union will interfere with the employee's right to join or not join a union, as provided and guaranteed by the Labor-Management-Relations Act. Nothing contained herein is to be construed as giving recognition to the union unless at some future time within the discretion of the union, the union is certified as having been chosen by a majority of employees in a single store unit election conducted by the National Labor Relations Board.

3. The Union agrees that it will not request bargaining rights unless it proves its right to represent the employees as provided in Paragraph 2 above; nor will the employer recognize any union except upon certification by the N. L. R. B.; nor will the Company file a petition for election unless a claim for representation is made upon the employer. Nothing herein shall preclude an employee representative from entering areas of the store which are open to customers; or from communicating with employees, provided such communication is on the employee's non-working time and in no way interferes with the operations of the business.

4. Any individual employee who may have a grievance involving an interpretation or application of or arising under the terms of this understanding with the L-M-C,

[fol. 33] and who has presented such grievance to his supervisor and the Personnel Department without reaching a satisfactory solution, may take his case to the chairman of the L-M-C who in turn shall refer the case to a panel of the L-M-C, whose majority decision and order shall be final and binding. The panel shall render its decision and order within fifteen days after the grievance has been submitted to it. The procedure regulating the hearing of the grievance by the L-M-C panel shall be determined by the panel.

5. The Union will agree that immediately upon receipt of this statement of understanding by the Toledo Labor-Management-Citizens Committee it will cease all picketing, boycotting or other interference with the business of The Lion Store wherever located. The Union, the strikers, and the Company shall withdraw forthwith all petitions, unfair labor practice charges and litigation before the National Labor Relations Board and the Courts and further agree not to institute in the future any litigation involving or arising out of the instant dispute. The Union and the Employer shall execute mutually satisfactory releases, releasing and discharging each other, the International Union, the local unions involved, and representatives of the union in their representative or individual capacity, labor papers, and all other labor organizations or their representatives who acted in concert or cooperation in connection with the dispute, from any and all claims, demands, causes of action, of whatever nature or description arising out of the labor dispute, including but not limited to the strikes, picketing, boycotting, and all other activities which may have taken place up to the present date.

6. This understanding shall become effective in accordance with the letter of transmittal dated December 24, 1958.

THE LION STORE,

DONALD ROSS,
President.

[fol. 34]

EXHIBIT F TO AMENDED COMPLAINT

December 30, 1958

Right Reverend Michael J. Doyle
1933 Spielbusch Avenue
Toledo, Ohio

Most Reverend Sir:

In order to make operative The Lion Store's commitments, set forth in the Statement of Understanding and attached Exhibits, transmitted to you, Monsigner Doyle, on December 24, 1958, we herewith agree to the conditions and guarantees of the Statement of Understanding. Attached Exhibits are subject to proofreading to assure conformity with applicable provisions of the expired contract and November 15, 1957 offer through L. M. C.

We agree that the success of the undertaking and stability of labor relations depend upon the good faith of the parties. Such assurances are granted on behalf of the unions.

Please accept our deep expression of gratitude for your conscientious and constructive efforts in the settlment of the dispute.

Respectfully yours,

RALPH HAMILTON,
Ralph Hamilton,

Sec'y.-Treas.,
Local No. 633.

THELMA HAAS,
Thelma Haas,

Sec'y.-Treas.,
Local No. 128.

SL:kw
att.

[fol. 35]

EXHIBIT G TO AMENDED COMPLAINT

April 7, 1959

Merritt W. Green, Sr.
Green & Kreutz, Attorneys
Security Building
Toledo 4, Ohio

Dear Mr. Green:

This acknowledges your letter of March 23, 1959, protesting the decision of the panel with respect to procedure of union organizers in contacting store employees for the purpose of soliciting union membership.

The agreement of December 24, 1958, provides among other things, that all panel decisions are "final and binding." The decision of the panel in this case was reached after a proper hearing and as panel decisions are final and binding, the panel sees no reason to re-open the matter.

The agreement of December 24, 1958, was certainly arrived at in good faith by all parties. That agreement specifically states that "nothing in the agreement will preclude an employee representative from entering the store to communicate with the employees on the latter's own time and provided it does not interfere with the operations of the store." It is the intent and objective of the panel members to make decisions in accord with the agreement and it is the opinion of the panel that the decision rendered on March 16, 1959, is in line with this agreement.

In respect of the grievances presented to the panel by Mrs. Ruth Morris regarding her dismissal from The Lion Store and the grievances presented by Bernard J. Mahan, Clement R. Walters, and Knox Dunlop, regarding dependent insurance coverage deductions, the panel decided that it should meet with the representatives of both the Retail Clerks Union and the Retail Merchants Association to discuss these grievances before decisions regarding them should be rendered by the panel.

The panel is setting up a meeting at the Catholic Offices Building for Thursday, April 16, at 10 a.m.

[fol. 36] Trusting that you may be able to attend this meeting and with every personal good wish, I remain

Very sincerely yours,

RT. REV. MSGR. M. J. DOYLE.

MJD:dar

IN UNITED STATES DISTRICT COURT

ANSWER—Filed June 29, 1959

First Defense

Now come the defendants, the Lion Dry Goods, Inc., and Lasalle's, a division of R. H. Macy & Co., and for their first defense say the Court lacks jurisdiction over the subject matter.

Second Defense

The defendants say that the amended complaint fails to state a claim against either defendant upon which relief can be granted.

Third Defense

1. The defendants admit the allegations of fact contained in the first, second, third, and fourth paragraphs of the amended complaint.

2. The defendants admit that on the 24th day of December, 1958, picketing of the premises of the defendant Lasalle's by members of the plaintiff unions was terminated as a result of assurances given to a mediation panel of the Toledo Labor-Management-Citizens Committee that striking employees of the defendant Lasalle's would be reemployed at a subsequent date, but deny that any assurances given by the defendants to the Toledo Labor-Man-

[fol. 37] agement-Citizens Committee were for the benefit of the plaintiff labor unions.

3. The defendants admit that Exhibits A and B attached to the plaintiffs' amended petition are copies of a letter, a statement, and exhibits delivered to the chairman of the Toledo Labor-Management-Citizens Committee by the defendant Lasalle's; that Exhibits D and E attached to plaintiffs' amended petition are copies of a letter and a statement given to the chairman of the Toledo Labor-Management-Citizens Committee by the defendant Lion Store; but deny that any agreement was made between the defendants, or either of them, and the plaintiff unions.

4. The defendants, for want of knowledge, deny that Exhibits C and F attached to the amended petition of the plaintiffs were transmitted to Msgr. Michael J. Doyle on the dates set forth in the amended petition.

5. The defendants deny any allegations of fact which, perchance, might be included in the statement of legal and other conclusions appearing in the last paragraph of Item No. 6 of the amended complaint and in Item No. 7, following immediately thereafter, the accuracy or propriety of such conclusions being questioned by the defendants.

6. The defendants deny that there is in existence any contract between the plaintiffs, or either of them, and the defendants, or either of them, or that there is in existence any agreement between the parties, collectively or singly, whereby the Toledo Labor-Management-Citizens Committee is given any right or authority to arbitrate any grievance which the plaintiffs might claim to have.

7. The defendants deny that the Toledo Labor-Management-Citizens Committee, or any panel thereof, has the right to render a decision which would require these defendants to recognize the plaintiffs herein, for any purpose, or to permit the employees of the plaintiff unions access to the premises of either of the defendants, for any purpose.

[fol. 38] 8. The defendants deny that any recognition was given to any decision of the Toledo Labor-Management-

Citizens Committee by way of a request for reconsideration of a decision of a panel of said Committee with regard to any rights claimed by the plaintiffs.

9. Further answering, the defendants say that on and prior to December 24, 1958, there was pending before the National Labor Relations Board petitions filed by each of the defendants herein requesting that elections be held among the employees of each of defendants' stores in order that a determination be made under the provisions of the Labor-Management Relations Act of 1947 to determine whether the employees of each of the defendants desired the plaintiff unions as their representative in collective bargaining with the defendant employers.

10. The defendants say that the aforesaid petitions for elections among the employees of the defendants were, subsequent to December 24, 1958, withdrawn by the defendants, because the plaintiffs no longer claimed to represent a majority of the employees of either of the defendants and, in fact, asserted that neither of the defendants, by any act done or assurance given by and through the Toledo Labor-Management-Citizens Committee, recognized the plaintiffs as the bargaining agent of any employees of the defendants; and, further, that the plaintiffs would not request bargaining rights on behalf of employees of either of the defendants unless they, the plaintiffs, or either of them, proves the right to represent the said employees in an election conducted by the National Labor Relations Board, as provided in the Labor-Management Relations Act of 1947.

11. Further answering, the defendants say that there is not in existence a contract between the plaintiffs and the defendants, or either of them, as contemplated by or provided for in the Labor-Management Relations Act of 1947; and, further, that the plaintiffs have not been certified as the collective bargaining representatives of employees of either of the defendants following any election held by [fol. 39] the National Labor Relations Board or, further, that the plaintiffs and the defendants have not negotiated,

discussed, or agreed to negotiate a collective bargaining contract of any kind since December 24, 1958, nor have the defendants since that time held any conversations with the plaintiffs, or any of its agents, or given or made any assurances to the plaintiffs, or any third for the benefit of the plaintiffs, with respect to wages, hours, and other terms and conditions of employment for or on behalf of the plaintiff unions, or members thereof.

WHEREFORE, the defendants pray that the petition of the plaintiffs be dismissed; that final judgment be entered for each defendant and against the plaintiffs; and that each defendant recover its costs.

.....

Attorneys for the Defendants.

MERRITT W. GREEN,
400 Security Building,
Toledo, Ohio,
For the Defendants.

IN UNITED STATES DISTRICT COURT

STIPULATION OF FACTS—Filed November 6, 1959

It is hereby stipulated by and between counsel for plaintiffs and counsel for the defendants that all exhibits attached to the amended complaint are true copies of the communications and documents they are represented to be and may be introduced in evidence as such, and may be considered by the Court to the extent material and relevant to the issues involved in either or both causes of action.

It is further stipulated by and between counsel for the respective parties that the documents attached to the answer brief of the defendants, dated December 30, 1958, February 19, 1959 and April 13, 1959, are copies of letters [fol. 40] which were written by counsel for the defendants to Monsignor Michael Doyle and were received by him, and further, that the communication attached to defendants'

answer brief dated March 12, 1959, is a true and correct copy of a memorandum sent to counsel for the defendants by Monsignor Doyle, and that all of these copies of said documents and communications may be accepted in evidence for consideration by the Court to the extent material and relevant to all issues in either or both causes of action.

It is further stipulated by and between counsel for the respective parties that Merritt W. Green, counsel for the defendants, appeared on behalf of the defendants at a meeting held on March 5, 1959 in the Catholic Charities Building, Toledo, Lucas County, Ohio, which said meeting was presided over by Monsignor Michael Doyle and assumed by all parties in attendance to be a meeting of a panel chosen by the Toledo Labor-Management-Citizens Committee to perform proper functions delegated to such a panel under the provisions of Section 7 of plaintiffs' Exhibit B at page 2, and Section 4 of plaintiffs' Exhibit E at page 2, both of which exhibits are set forth in the amended complaint. (Statements of Understanding delivered to Monsignor Doyle by Lasalle's and The Lion Store respectively.)

It is further stipulated by and between counsel for the parties that the plaintiff Unions and the defendants, individually, have not engaged in collective bargaining with respect to wages, hours and other terms and conditions of employment pertaining to employees of either of the defendants or for the purpose of the negotiation of an agreement concerning wages, hours, or other terms of employment, or any questions arising thereunder, or negotiations for the execution of a written contract incorporating therein any agreement negotiated or reached between the parties; and it is further stipulated between counsel that none of the rates of pay, wage schedules, terms and conditions of the personnel policy and program, or other provisions or conditions contained in the entire plaintiffs' Exhibit B were [fol. 41] negotiated as a result of bargaining or negotiations between either of the defendants and the Toledo Labor-Management-Citizens Committee acting for or on behalf of the plaintiff Unions; and it is further stipulated

that all of the provisions contained in plaintiffs' entire Exhibit B, with the exception of Item No. 40 appearing at the last page of said exhibit, were in force and effect prior to December 24, 1958. Nothing in this paragraph is to preclude the Court from finding that the settlement of December 24, 1958, was a collective bargaining agreement.

It is further stipulated by and between counsel for the parties that the employee cafeterias in the downtown stores of the defendants and of the Lamson Brothers Company are located in areas in each of the stores not open to customers; and it is further stipulated between counsel that the Lasalle employees, McGinnis and Thal, were, prior to leaving their employment because of a strike on or about November 23, 1957, employed as salesladies in the Men's Furnishings Department in the highest wage classification provided in the wage schedules then in effect, and that upon their return to work at Lasalle's after December 24, 1958, each was employed as a saleslady in the Men's Furnishings Department in the highest wage classification provided in the wage schedules then in effect, and that the only difference in their work assignments upon their re-employment after December 24, 1958 was in the station to which each was assigned to work within the Men's Furnishings Department; the one formerly assigned to the station where men's shirts were sold was assigned to the station where men's sweaters were sold, with the other being assigned to stations in reverse of the ones just mentioned, that is, her later assignment being shirts as compared to her former assignment of sweaters.

/s/ JOSEPH E. FINLEY,
Attorney for Plaintiffs.

/s/ MERRITT W. GREEN,
Attorney for Defendants.

[fol. 42]

IN UNITED STATES DISTRICT COURT

MEMORANDUM OPINION—Filed December 21, 1959

KLOEB, *J.*:

Plaintiffs filed this action in this Court pursuant to Section 301 of the Labor-Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. A., Sec. 185 (a).

The amended complaint filed June 19, 1959 outlines two causes of action against the defendants, and prays in the first cause of action for an order of the Court requiring the defendants to permit non-employee representatives of plaintiffs to have access to areas of the stores of defendants, to wit, employees' cafeterias, which are not open to customers. In connection with the second cause of action, plaintiffs seek an order of the Court requiring the defendant LaSalle's to place two employees who were returned to work after the strike had ended on December 24, 1958, in their position classifications, and at the precise stations in the Men's Furnishings Department that they had occupied prior to the strike.

Attached to the amended complaint is Exhibit A, a letter from defendant LaSalle's to the chairman of the Toledo Labor-Management-Citizens' Committee, a Committee that had been engaged in mediating the differences between the respective parties and matters involved in the strike, which letter was accompanied with a "Statement of Understanding," with exhibits, all being offered to the Labor-Management-Citizens' Committee by the defendant LaSalle's.

There is also attached to the amended complaint Exhibit C, which is a letter from plaintiffs addressed to the Labor-Management-Citizens' Committee, in which they agree to the conditions and guarantees of the "Statement of Understanding."

There are also attached to the amended complaint Exhibits D, E and F, which are documents pertaining to defendant Lion Dry Goods, Inc., and which are comparable to the LaSalle exhibits heretofore referred to.

Under date of June 29, 1959, defendants filed their answer to the amended complaint, in which they set up three

[fol. 43] defenses, first, that the Court lacks jurisdiction over the subject matter, second, that the amended complaint fails to state a claim against either defendant upon which relief can be granted, and, third, that there is not in existence a contract between the plaintiffs and the defendants or either of them, as contemplated by or provided for in the Labor-Management Relations Act of 1947, and particularly Section 301 (a) thereof.

On October 15, plaintiffs filed their brief and, on October 26, defendants filed an answer brief. On November 2, plaintiffs filed a reply brief.

On November 6, in connection with oral argument, the parties filed a stipulation, which reads in part as follows (pages 2 and 3):

> "It is further stipulated by and between counsel for the parties that the plaintiff Unions and the defendants, individually, have not engaged in collective bargaining with respect to wages, hours and other terms and conditions of employment pertaining to employees of either of the defendants or for the purpose of the negotiation of an agreement concerning wages, hours, or other terms of employment, or any questions arising thereunder, or negotiations for the execution of a written contract incorporating therein any agreement negotiated or reached between the parties; and it is further stipulated between counsel that none of the rates of pay, wage schedules, terms and conditions of the personnel policy and program, or other provisions or conditions contained in the entire plaintiffs' Exhibit B were negotiated as a result of bargaining or negotiations between either of the defendants and the Toledo Labor-Management-Citizens Committee acting for or on behalf of the plaintiff Unions; and it is further stipulated that all of the provisions contained in plaintiffs' entire Exhibit B, with the exception of Item No. 40 appearing at the last page of said exhibit, were in force and effect prior to December 24, 1958. Nothing in this paragraph is to preclude the Court from finding that [fol. 44] the settlement of Dec. 24, 1958, was a collective bargaining agreement.

"It is further stipulated by and between counsel for the parties that the employee cafeterias in the downtown stores of the defendants and of the Lamson Brothers Company are located in areas in each of the stores not open to customers; and it is further stipulated between counsel that the LaSalle employees, McGinnis and Thal, were, prior to leaving their employment because of a strike on or about November 23, 1957, employed as salesladies in the Men's Furnishings Department in the highest wage classification provided in the wage schedules then in effect, and that upon their return to work at LaSalle's after December 24, 1958, each was employed as a saleslady in the Men's Furnishings Department in the highest wage classification provided in the wage schedules then in effect, and that the only difference in their work assignments upon their re-employment after December 24, 1958 was in the station to which each was assigned to work within the Men's Furnishings Department; the one formerly assigned to the station where men's shirts were sold was assigned to the station where men's sweaters were sold, with the other being assigned to stations in reverse of the ones just mentioned, that is, her later assignment being shirts as compared to her former assignment of sweaters."

It appears that, in November of 1957, plaintiffs, who at some prior time had been the recognized bargaining agents for the Retail Associates, Inc., comprised of four downtown department stores in Toledo, Ohio, and including the two defendants herein, called a strike against the four members of the Retail Associates, Inc. During the period of the strike, from November of 1957 to December 24, 1958, plaintiffs were not and do not claim to have been and are not now the recognized majority representatives of the employees of defendants. They do not claim to have such rights. They admit that they do not represent a majority [fol. 45] of the employees of the defendants, but they say that they do represent some employees and that because of this representation they are entitled to petition for the enforcement of a contract under Section 301 (a).

A few days prior to December 24, 1958, a plan was advanced by the chairman of the Toledo Labor-Management-Citizens' Committee whereby it was suggested that, if defendant LaSalle's would re-employ the strikers, plaintiffs would disclaim that they represented a majority of the employees of defendants. At that particular time LaSalle's was the only store where workers were out on strike.

Upon the presentation to the Labor-Management-Citizens' Committee of the exhibits heretofore referred to and that are attached to the amended complaint, picketing ceased and the strike was declared off. Employees of defendants LaSalle's were restored to work in due course in accordance with the Statement of Understanding.

It appears now that the defendants refuse to permit certain representatives of plaintiffs to enter the employees' cafeteria for the purpose of soliciting membership. This the plaintiffs complain of in their first cause of action in the amended complaint. Paragraph 6 of Exhibit B attached to the complaint reads in part as follows:

> "• • • Nothing herein shall preclude an employee representative from entering areas of the store which are open to customers; or from communicating with employees, provided such communication is on the employee's non-working time and in no way interferes with the operating of the business."

Defendants claim that the employees' cafeteria is an area which is not open to customers and that, therefore, plaintiffs' agents are precluded from communicating with defendants' employees in these areas. Plaintiffs are of the opinion that they have a right to communicate with defendants' employees in these areas provided such communication is on the employees' non-working time and in no way interferes with the operation of the business of the defendants.

[fol. 46] Plaintiffs' second cause of action is based on the ground that, while employees McGinnis and Thal, who up to December 24, 1958, were striking employees, and were re-employed as salesladies in the Men's Furnishings Department following their return to work, they were not again stationed at the exact counters theretofore occupied

by them but that they were caused to exchange their positions at the shirt and sweater counters. There is no dispute but that the rate of pay was not reduced upon their return to work and that their earnings and earning opportunities are not changed.

The grounds relied upon in these two causes of action appear to be tenuous indeed and to be based on grievances that are not weighty in character. However, they do provide a "causus belli." Whether there is justification for taking the time of a Court because of these differences between the parties is open to grave question.

It is plaintiffs' position that the Statements of Understanding presented by defendants to the Labor-Management-Citizens' Committee and the subsequent concurrence in these statements by plaintiffs constitute a contract, at least a contract for the benefit of plaintiffs, and that it is, therefore, such a contract as is contemplated by Section 301 (a) of the Act.

Section 301(a) of the Act, 29 U. S. C. A. Sec. 185(a), reads as follows:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

It is the contention of the defendants that, while Section 301(a) refers to contracts between an employer and a labor organization representing employees, this has reference to collective bargaining contracts, or agreements ar- [fol. 47] rived at through collective bargaining, and could not have reference to the situation that obtains here.

From a study of the legislative background of the Act, and from certain decisions that we have examined, we are of the opinion that the strike settlement agreement that was concluded on December 24, 1958 is not such a contract as is contemplated by Section 301(a) of the Act, and that,

therefore, we do not have jurisdiction over the subject matter.

The plaintiffs have cited and apparently rely upon the cases of *Local 19, etc.* v. *The Buckeye Cotton Oil Company*, 236 Fed. (2d) 776, and *A. L. Kornman Company* v. *Amalgamated Clothing Workers of America*, 264 Fed. (2d) 733, cert. den. Oct. 12, 1959.

These are cases that were decided by the Sixth Circuit Court of Appeals but, upon examination, we find that they both grow out of disagreements over existing collective bargaining agreements that were duly entered into by the parties under and in accordance with the provisions of the Act.

In the case at bar, the Statements of Understanding specifically point out that nothing contained therein is to be construed as giving recognition to the Union unless, at some future time within the discretion of the Union, the Union is certified as having been chosen by a majority of employees in a single store unit election conducted by the National Labor Relations Board. At no time have plaintiffs been so certified by the National Labor Relations Board. The Statements of Understanding further provide that the Union agrees that it will not request bargaining rights unless it proves its right to represent the employees, and that the employer will not recognize any Union except upon certification by the National Labor Relations Board.

We believe that the Act, in lodging authority in any District Court of the United States, contemplates such authority to be exercised where there has been a violation of a contract that had been entered into between an employer and a labor organization representing employees in an industry affecting commerce and that it thereby contem- [fol. 48] plates a collective bargaining agreement. The agreement that we are here considering is a strike settlement agreement which we cannot construe as having been entered into for the benefit of plaintiffs.

In the case of *Schatte, et al.* v. *International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of United States and Canada, et al.*, 84 Fed. Supp. 669, aff. 182 Fed. (2d) 158, cert. den. 340 U. S. 827, we find the following (p. 672, par. 4):

> "Whatever else may be said (and a great deal has been said in scores of pages of briefs and more than three full days of argument), any right of recovery under Section 301 must rest upon a *contract* and its asserted violation. *The whole Act relates to labor contracts, hence it must be a contract contemplated by the Act, i.e., a collective bargaining contract or contract relating to fair or unfair labor practices.* • • •" (Emphasis supplied.)

On page 673, pars. 7 and 8, we find the following:

> "The plaintiffs contend that in any event they are appropriately parties plaintiff under Rule 23, Federal Rules of Civil Procedure, 28 U. S. C. A., relating to class suits. Whether they do or could qualify under that rule is not necessary to determine as the provisions of Sec. 301 are inconsistent with Rule 23, Federal Rules of Civil Procedure, and must therefore prevail. *Sec. 301 is a special and limited grant of jurisdiction which must be strictly construed.* This is especially so in the light of the history of legislation dealing with labor relations and disputes such as the Clayton Act, 15 U. S. C. A. § 17, the Norris-LaGuardia Act, 29 U. S. C. A. § 101 et seq., the Wagner Act, 29 U. S. C. A. § 151 et seq., and the Act under consideration." (Emphasis supplied.)

We are of the opinion that collective bargaining contracts between a Union and an employer were the only "contracts" intended to be actionable in a District Court of the United States under the provisions of Section 301(a), and that [fol. 49] none of the factors which give substance to the rights of Unions to bring actions under Section 301 are present in this case, and particularly a contract between plaintiffs and defendants. We, therefore, conclude that the Court is without jurisdiction to entertain this case, and the complaint is, therefore, dismissed.

Defendants may prepare and file findings of fact and conclusions of law drawn in accordance with this Memorandum Opinion within fifteen (15) days, and the plaintiffs

may, within ten (10) days thereafter, file any suggested amendments or additions thereto.

(signed) FRANK L. KLOEB,
United States District Judge.

Toledo, Ohio.

IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW—
Filed January 29, 1960

This cause came on for trial and the Court, having considered the pleadings, the stipulations of the parties and arguments of counsel therefor, finds the facts and states the conclusions of law as follows:

FINDINGS OF FACTS

1. The "statement of understanding" given by each of the defendants to the Toledo Labor-Management Citizens Committee on December 24, 1958 was a strike settlement statement.

2. The plaintiffs are not now and were not on December 24, 1958, the recognized majority representatives of the employees of the defendants, or either of them.

3. The statements of understanding given the Toledo Labor-Management-Citizens Committee are not collective [fol. 50] bargaining contracts negotiated by or on behalf of the plaintiffs with either of the defendants.

4. There is no existing collective bargaining contract between the plaintiffs and either of the defendants.

CONCLUSIONS OF LAW

1. The statement of understanding given by each of the defendants on December 24, 1958, is not a contract as is contemplated by Section 301 (a) of the Labor-Management Relations Act of 1947.

2. This Court is without jurisdiction over the subject matter of this action.

3. The complaint of the plaintiffs should be, and therefore is, dismissed.

FRANK L. KLOEB,
Judge of the United States District Court for the Northern District of Ohio, Western Division.

Approved:

MERRITT W. GREEN,
Attorney for Defendants.

JOSEPH E. FINLEY,
Attorney for Plaintiffs.

IN UNITED STATES DISTRICT COURT

ORDER AND JUDGMENT—Filed January 29, 1960

The issues in the above entitled action having been regularly brought on for trial before the Court without a jury, and in accordance with the agreements and stipulations of counsel for the presentation of the evidence, and the parties having appeared by their respective counsel and the Court having filed its opinion on the 21st day of December, 1959 and subsequently thereto, the Court having made its find-
[fol. 51] ings of fact and conclusions of law directing judgment as hereinafter provided, it is hereby

ORDERED, ADJUDGED and DECREED that the complaint of the plaintiff be and hereby is dismissed at plaintiff's costs.

FRANK L. KLOEB,
Judge.

IN THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

STIPULATION—Filed in the United States Court of Appeals, Sixth Circuit

It is hereby agreed and stipulated to on this ..... day of ....., 1960, by and between counsel for appellants, Joseph E. Finley, and counsel for appellees, Merritt W. Green, in accordance with Rule 16 (5) of the Rules of this Court, that a Joint Appendix shall be filed. Such Joint Appendix shall contain the following matter:

(a) Amended Complaint.

(b) Answer.

(c) Stipulation of the parties entered into at time of hearing, November 6, 1959.

(d) Memorandum opinion of the District Court.

(e) Findings of Fact and Conclusions of Law.

(f) Order and Judgment dismissing the complaint.

It is further stipulated that the expense of printing the joint appendix shall be taxed as costs by the prevailing party in such amount as has been expended by him.

JOSEPH E. FINLEY,
RUDD, OBER, FINLEY AND MILLER,
Attorney for Appellant.

MERRITT W. GREEN,
Attorney for Appellee.

[fol. 52]

IN THE UNITED STATES COURT OF APPEALS

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—
November 29, 1960

Before: McAllister, Chief Judge, Martin and Weick, Circuit Judges.

This cause is argued by Joseph E. Finley for appellants and by Merritt William Green for appellees and is submitted to the court.

[fol. 53]

IN THE UNITED STATES COURT OF APPEALS

JUDGMENT—December 15, 1960

This appeal from the judgment of the United States District Court, dismissing the complaint of appellants, has been heard and considered upon the record and upon the oral arguments and briefs of the parties.

This court is of opinion that the district court correctly construed Section 301 of the Labor-Management Relations Act of 1947 [29 U. S. C. A., section 185(a)] and was free from error in holding that it had no jurisdiction over the subject matter of the litigation. The contract here involved is not a collective bargaining agreement between an employer and a labor organization representing its employees. We think that the trial court was correct in reaching the [fol. 54] conclusion that collective bargaining contracts between a union and an employer are the only contracts intended to be actionable in a United States District Court under the provisions of section 301(a).

In our judgment, United States District Judge Kloeb was right in concluding that he was without jurisdiction in this case. He, therefore, properly dismissed the complaint.

Accordingly, for the reasons stated in the opinion of the District Judge, the judgment of the district court is affirmed.

It is so ordered.

John D. Martin, United States Circuit Judge.

[fol. 55] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 56]

SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—March 7, 1961

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 28, 1961.

Potter Stewart, Associate Justice of the Supreme Court of the United States.

Dated this 7th day of March, 1961.

[fol. 57]

SUPREME COURT OF THE UNITED STATES

No. 850—October Term, 1960

RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL UNIONS NOS. 128 AND 633, Petitioners,

vs.

LION DRY GOODS, INC., et al.

ORDER ALLOWING CERTIORARI—May 8, 1961

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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FILED
MAR 27 1961
JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. [redacted]/73

RETAIL CLERKS INTERNATIONAL ASSOCIATION,
LOCAL UNIONS NOS. 128 and 633,
Petitioners,

vs.

LION DRY GOODS, INC.,
and
LaSALLE'S DIVISION OF R. H. MACY & CO.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals for the Sixth Circuit.

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THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-5847

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In the Supreme Court of the United States

OCTOBER TERM, 1960.

No. _____.

RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL UNIONS NOS. 128 and 633,

Petitioners,

vs.

LION DRY GOODS, INC.,

and

LaSALLE'S DIVISION OF R. H. MACY & CO.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW.

The opinion of the United States District Court for the Northern District of Ohio, Western Division, is reported at 179 F. Supp. 564. The opinion of the United States Court of Appeals for the Sixth Circuit is reported at __ F. 2d, __, and at 47 Labor Relations Reference Manual (LRRM) 2402.

STATEMENT OF JURISDICTION.

The order of the Court of Appeals for the Sixth Circuit was entered on December 15, 1960. By order of this Court by Mr. Justice Stewart, time in which to file this petition was extended to March 28, 1961.

There was no motion made for re-hearing.

Jurisdiction of this Court is based upon 28 U. S. C. Sec. 1254 (1).

QUESTION PRESENTED.

Whether a federal district court may refuse to exercise jurisdiction under Section 301(a) of the Labor-Management Relations Act to enforce arbitration awards rendered pursuant to a strike settlement agreement between an employer and a labor union representing some of its employees.

STATUTE INVOLVED.

The only constitutional or statutory provision involved in this case is Sec. 301(a) of the Labor-Management Relations Act of 1947, 29 U. S. C. Sec. 185(a), which reads as follows:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT OF THE CASE.

Petitioners, labor unions in Toledo, Ohio, were the collective bargaining agents for employees of the respondent employers for some twenty years prior to 1957, and were parties to contracts throughout that period. In 1957, negotiations were undertaken for a new agreement, but an impasse was reached. A strike was commenced, with employees of respondent LaSalle's, one of the retail department stores involved, leaving their jobs for the picket line in an effort to secure a new contract. A boycott was instituted at one other store not involved in this litigation,

and the impasse was continued with the respondent Lion Store.

The strike was a particularly long and bitter dispute, lasting more than thirteen months, with picketing and boycotting being carried out through the entire period. It was finally terminated on December 24, 1958, by the execution of the documents upon which this action was based. The Toledo Labor-Management-Citizens Committee, a nationally-known voluntary agency of the city, hereinafter referred to as the L-M-C, mediated the dispute and through its offices, brought about the end of the strike and returned labor peace to the streets of Toledo.

The unions agreed to end all striking, picketing, and boycotting. Although they had been the unchallenged bargaining agent of the employees of respondent stores for more than twenty years, the unions relinquished their claims as majority representatives of the employees of the stores as a part of the settlement. In consideration of these two major union concessions, the respondents executed the documents in issue here which constituted the strike settlement agreement and which make the contract within Sec. 301 of the Act, upon which this action was based.

Respondent LaSalle's agreed to reinstate all the striking employees, warranted that it would not discriminate against them, and executed detailed minimum guarantees of employment conditions, including schedules of wages, hours, and working conditions, which were an integral part of the settlement. Respondent Lion Store executed the same guaranteed employment conditions as a part of its agreement.

These conditions of employment, agreed to by the parties, are of the usual matters contained in every collective bargaining contract. They provided contractual cover-

age for such items, among many others, as: (1) seniority provisions in great detail, (2) call-in pay, (3) commissions and bonuses, (4) overtime compensation, (5) holiday pay, (6) leaves of absence, (7) termination pay, (8) just cause for discharge, (9) vacation schedules, (10) employee discounts, and (11) insurance benefits.

These agreements further contained enforcement machinery in the event employees were denied the benefits provided them. A detailed system of settling and disposing of grievances was provided, with a final step culminating in arbitration before the L-M-C. It was provided that a decision of the L-M-C was to be final and binding on the parties.

Thus, the strike settlement agreement contained every normal and usual element of the traditional collective bargaining contract except recognition of the petitioners as the majority representatives of the more than two thousand employees covered by these agreements.

Shortly after the settlement of the strike, disputes and differences arose between the parties and a number of grievances were referred to the L-M-C for decision. Hearings were held on this first round of grievances, the respondent companies participated fully by counsel, were fully heard on all grievances, and decisions were rendered by the L-M-C on March 12, 1959. Some of the grievances were decided in favor of the respondent companies, and some were remanded back for further consideration. Of the number presented, only two were decided in favor of the unions and the employees, and these two awards became the foundation for the two causes of action set forth in the complaint.

The agreements contained a provision that "nothing herein shall preclude an employee representative from entering areas of the store which are open to customers; or

from communicating with employees, provided such communication is on the employee's non-working time and in no way interferes with the operating of the business." The unions, seeking to make contact with their members and other employees affected by the agreements, and to solicit non-members, were immediately prohibited from sending employee representatives in the store, and upon a grievance based upon such employer refusal, the L-M-C panel members, who had participated in the actual settlement of the strike, decided in favor of the unions. The L-M-C ruling even said, "It must be viewed as a breach of faith on the part of management to create a place where union organizers cannot solicit union membership" (J. A. 6a). The companies sought reconsideration of this ruling, and on April 7, 1959, the L-M-C reaffirmed its decision (J. A. 35a). The second grievance involved assignment by LaSalle's of striking employees to work stations other than those they had occupied prior to the strike, in violation of the agreement, and the L-M-C panel ordered these two employees restored to their former work stations (J. A. 6a-7a).

When the employers refused to abide by the L-M-C rulings, petitioners brought this action in the District Court under Sec. 301 to enforce the arbitration awards of the L-M-C. The District Court, deciding only the question of jurisdiction, stated (J. A. 47a): "* * * we are of the opinion that the strike settlement agreement that was concluded on December 24, 1958, is not such a contract as is contemplated by Sec. 301(a) of the Act, and that, therefore, we do not have jurisdiction over the subject matter."

The court said further, "We believe that the Act, in lodging authority in any District Court of the United States, contemplates such authority to be exercised where

there has been a violation of a contract that had been entered into between an employer and a labor organization representing employees in an industry affecting commerce and that it thereby contemplates a collective bargaining agreement. The agreement that we are here considering is a strike settlement agreement which we cannot construe as having been entered into for the benefit of plaintiffs." The Court concluded (J. A. 48a), "We are of the opinion that collective bargaining contracts between a Union and an employer were the only 'contracts' intended to be actionable in a District Court of the United States under the provisions of Section 301(a), and that none of the factors which give substance to the rights of Unions to bring actions under Sec. 301 are present in this case, and particularly a contract between plaintiffs and defendants."

The Court of Appeals limited its discussion primarily to an endorsement of the decision and holding of the District Court. In its order, the Court of Appeals said: "The contract here involved is not a collective bargaining agreement between an employer and a labor organization representing its employees. We think that the trial court was correct in reaching the conclusion that collective bargaining contracts between a union and an employer are the only contracts intended to be actionable in a United States District Court under the provisions of Section 301(a)."

It is difficult to determine whether the District Court, and the Court of Appeals in its affirmation, was ruling that *only* a traditional collective bargaining contract concerning wages, hours, and working conditions is enforceable under Sec. 301. If such were the foundation for the decisions, then any other kind of a contract between employers and unions representing employees would not be enforceable under Sec. 301, including strike settlement

agreements and other kinds of agreements. Presumably, under such reasoning, strike settlement agreements between employers and unions representing a majority of employees would not be enforceable.

The District Court clearly said, "* * * collective bargaining contracts * * * were the only 'contracts' intended to be actionable," and the Court of Appeals explicitly added, "We think that the trial court was correct in reaching the conclusion that collective bargaining contracts * * * are the only contracts intended to be actionable * * *." The Court of Appeals also said, "The contract here involved is not a collective bargaining agreement between an employer and a labor organization representing employees."

On the other hand, while not fully articulated in its opinion, the District Court may have been ruling that the agreement in this case was not a collective bargaining agreement because the unions did not represent a majority of the employees involved. Some of its language may lead to this conclusion, at J. A. 47a:

> "In the case at bar, the Statements of Understanding specifically point out that nothing contained therein is to be construed as giving recognition to the Union unless, at some future time within the discretion of the Union, the Union is certified as having been chosen by a majority of employees in a single store unit election conducted by the National Labor Relations Board. At no time have plaintiffs been so certified by the National Labor Relations Board. The Statements of Understanding further provide that the Union agrees that it will not request bargaining rights unless it proves its right to represent the employees, and that the employer will not recognize any Union except upon certification by the National Labor Relations Board."

The District Court's earlier statement that "We believe that the Act * * * contemplates such authority to be exercised where there has been a violation of a contract that had been entered into between an employer and a labor organization representing employees * * *" also supports this view, since one of respondents' major arguments was that the unions did not "represent" employees because they were not certified, or majority, representatives. The succinct statement of the Court of Appeals that, "The contract here involved is not a collective bargaining agreement between an employer and a labor organization representing its employees" lends color to this same position, since it may have been deciding that the agreement was not a collective bargaining contract because the unions did not represent employees because they did not represent a majority.

In either view of what the lower courts were holding, we submit there are serious and far-reaching questions of law involved in the single issue of whether or not the agreements of December 24, 1958, are enforceable as "contracts" under Sec. 301 of the Act. If Sec. 301 is limited to "only" collective bargaining contracts, does this violate the statute which uses the word "contracts" without any modification, and which contains a legislative history which saw Congress eliminate the adjectives, "collective bargaining" from the statute? If Sec. 301 is limited to enforcing only "collective bargaining" contracts, what is a collective bargaining contract? Why are the agreements in this case not collective bargaining contracts, since they were negotiated and executed by labor unions representing substantial numbers of employees (which was a bargain in a collective manner) and since they contained detailed provisions concerning wages,

hours, and working conditions, as well as enforcement machinery?

If the agreements involved in this case are not enforceable because the unions gave up their majority status, and did not, therefore, "represent" employees, does this comply with the statutory language relating to a "labor organization representing employees"? Does the statutory language require majority representation, or must a union only represent some employees? What is the enforcement status of minority union contracts, of which they are many, if this is the correct view of the law?

Is the national labor policy to be served by narrowly limiting the scope of Sec. 301 to "only" collective bargaining contracts, or to "only" contracts where a union represents a majority of the employees involved? Does the national labor policy of promoting the peaceful settlement of disputes by agreement of the parties compel enforcement of salutary agreements of this kind which settled thirteen months of striking, picketing, and boycotting under the statutory language that allows enforcement of "contracts" under Sec. 301? What conceivable policy reasons could be stated to deny enforcement of agreements of this kind which have such a fundamental effect upon interstate commerce?

These are questions of immense significance raised by this case. We respectfully submit that these questions and the issues involved are the most important yet presented to this Court on the scope of Sec. 301, after the basic question of *Lincoln Mills* has been settled. They fully merit review by this Court, as we shall attempt to henceforth demonstrate.

REASONS FOR GRANTING THE WRIT.

(a) IMPORTANCE OF THE QUESTION INVOLVED.

Grave questions concerning rights created by Sec. 301 of the Act,[1] concerning the enforceability of arbitration clauses in contracts,[2] and consideration of the nature of interest of unions, companies, and trustees of welfare funds under collective bargaining agreements,[3] have already been reviewed by this Court. These cases demonstrate not only the impressive public importance of issues arising under Sec. 301, but show further the necessity to afford guidelines for the lower federal courts in administering the variety of complex problems that arise under this statute. At stake in all these cases is the national labor policy of fostering industrial peace.[4]

The national policy of fostering industrial peace is equally at stake in this case. If "only" collective bargaining contracts are enforceable, then industrial strife and burdens on commerce can arise from disputes over all other kinds of agreements between employers and unions. If contracts are enforceable only with majority unions, then all agreements between employers and unions that do not represent a majority may not be enforced in the federal courts, and not only will industrial strife be fomented, but a veritable Pandora's box of other legal problems will quickly arise. Cf. *International Ladies Garment Workers' Union, AFL-CIO v. NLRB and Bernhard-Altmann Texas Corporation*, No. 284, October Term, 1960, now pending in this Court.

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[1] *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448.

[2] *United Steelworkers v. Warrior and Gulf Navigation Co.*, 363 U. S. 574; *United Steelworkers v. American Manufacturing Co.*, 363 U. S. 564; *United Steelworkers v. Enterprise Wheel and Car Corp.*, 363 U. S. 593.

[3] *Lewis v. Benedict Coal Corp.*, 361 U. S. 459.

[4] *Textile Workers Union v. Lincoln Mills, supra*, note 1.

1. If only collective bargaining contracts are enforceable

If the lower courts were holding that "only" collective bargaining contracts are enforceable, there are numerous kinds of agreements between employers and unions that might never merit enforcement under Sec. 301. The strike settlement agreement in this case, while presenting an outstanding example, is by no means unique. In the *ILGWU* case, No. 284, now pending, the Court already has before it an example of a strike settlement agreement that preceded a later collective bargaining contract. Would the strike settlement agreement, if the parties had later failed to agree on a collective bargaining contract, have been enforceable under Sec. 301 had it been necessary to sue on such an agreement, aside from the majority representation question involved in that case?

The Court of Appeals for the Fifth Circuit enforced a strike settlement agreement in *Lodge No. 12, IAM v. Cameron Iron Works*, 257 F. 2d 467, although it was tied in with a collective bargaining contract. The District Court for the Southern District of New York enforced a strike settlement agreement in *Farrand Optical Co. v. Electrical Workers Local 475*, 143 F. Supp. 527, without any attempt to hold that it was not a "collective bargaining contract," although it was a specific agreement in settlement of a strike.

The completed nature of the arbitration before the L-M-C in this case brings into play another important consideration in the treatment of enforceable contracts under Sec. 301. Should a union with no collective bargaining status vis-a-vis an employer become involved in a dispute with that employer, perhaps over the discharge of an employee who might have union representation, and should this union and this employer then enter into a

separate submission agreement to submit the particular dispute to an ad hoc arbitrator for a final and binding ruling, and should an award be handed down, would such an award be enforceable under Sec. 301? The submission agreement itself, while in no way a traditional collective bargaining contract, would nonetheless be a contract between an employer and a union representing employees, and in the interest of labor peace ought to be enforceable as a "contract" under Sec. 301. Just as this Court recognized in *Enterprise Wheel and Car, supra*, with regard to an arbitration that "There the need is for flexibility in meeting a wide variety of situations," so it is with the statutory scope of Sec. 301's need for flexibility in meeting a wide variety of situations, such as the kind posed here, or such as the *fait accompli* of an arbitration participated in willingly by the parties followed by an award.

Other kinds of contracts may not be strictly called "collective bargaining" agreements, but they may merit enforcement. The Court of Appeals for the Ninth Circuit enforced an agreement that was primarily a contract to supply labor in *Plumbers and Steamfitters Union v. Dillion*, 255 F. 2d 820 (CA 9, 1958). The Court referred to the agreement in issue as a collective bargaining contract, and although no question was apparently raised concerning its exact status, it is apparent from the Court's opinion that it was an agreement to supply union labor, and not a traditional collective bargaining contract at all.

Amendments to the Act by the Labor-Management Reporting and Disclosure Act of 1959 pose other questions as to whether some contracts are "collective bargaining" contracts and are enforceable. A new Sec. 8(f) has been added to the primary labor statute, permitting unions and employers in the building and construction industry to make pre-hire contracts without violating the unfair labor

practice provisions of the law. Pre-hire contracts are consonant with the widespread use of hiring halls or variations of hiring arrangements in many industries, as this Court well knows. If these contracts contain only recognition agreements and provide for a form of union security, and if they leave negotiation of wages, hours, and working conditions to a later time, are they collective bargaining contracts?

Recognition agreements are commonly executed between employers and unions, leaving for later negotiation substantive terms of employment conditions. Would such an agreement, which provided for no more than recognition, be a "collective bargaining" contract which could be enforced under Sec. 301? A union confronted with a breach of such a contract might have a remedy of compelling the employer to bargain under Sec. 8(a)(5) of the Act, but NLRB procedures might be long and cumbersome, and a Sec. 301 action might provide the best and quickest remedy.

Many unions frequently make licensing agreements with employers for the use of union labels. See *Werne, Law and Practice of the Labor Contract*, Sec. 20.30. These are not traditional collective bargaining agreements, but they serve a highly useful purpose in labor-management affairs. Do they deserve enforcement under Sec. 301?

Agreements between employers and unions for the settlement of jurisdictional disputes are common place. See *Werne, supra*, Sec. 20.60. They might not be called collective bargaining agreements, but their great utility in preserving industrial peace is obvious. Do they merit enforcement under Sec. 301?

Agreements between employers and unions to establish peaceful procedures for determining representation status are also common. Unions and employers often make

agreements to hold elections outside the procedures of the National Labor Relations Board, as they have every right to do. One such example was provided in *United Public Workers v. University of Chicago*, 23 LRRM 2352 (Ill. Cir. Ct., 1949), at a time when the NLRB would not assert its statutory jurisdiction over universities. The contract was not a collective bargaining agreement since the union was agreeing only to a determination of whether or not it represented a majority. It must have represented some employees for it to become a party to any such kind of agreement. But would such a contract be enforced under Sec. 301 if the statutory term, "contracts," is interpreted to mean "only" collective bargaining agreements?

In addition, inherent difficulties arise in defining tight lines around the meaning of the term "collective bargaining." The term as used in Sec. 7 where it is stated that "Employees shall have the right * * * to bargain collectively through representatives of their own choosing * * *" appears to have evolved from the historic concept of employees acting together in groups rather than individually.[5] The Wagner Act contained no definition of collective bargaining and the definition contained in LMRA in Sec. 8(d) in 1947 defined the term for the purpose of Sec. 8's unfair labor practice provisions, which relate to the *duty* to bargain with a majority representative.

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[5] See testimony of then Secretary of Labor Frances Perkins, testifying in hearings on the bill which became the National Labor Relations Act, 1 Leg. His. N. L. R. A. 1935, p. 1433. Miss Perkins said: "I understand it was Beatrice and Sidney Webb who originated the term 'collective bargaining.' The term seemed appropriate since the workers were no longer carrying on individual negotiations with the employer, but they attempted to get agreements with regard to their work as a group rather than individuals, and the same rule was to apply to all of the groups rather than to apply to John Jones and Sam Smith."

When one applies the historic meaning of collective bargaining, it is difficult to argue that the agreements in this case were not arrived at through collective bargaining. The unions acted collectively for great numbers of employees who were their members. They were able to secure jobs for the striking employees, secured for them guaranteed minimum terms and conditions of employment, and obtained a grievance procedure for enforcement of their rights. This was collective action in the purest sense.[6]

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[6] Special characteristics of the collective bargaining contract were set forth in 70 Yale L. J. 611, 615, f.n. 29, which were gleaned from the opinion of Mr. Justice Douglas in *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U. S. 574, 578-82, and from Shulman, Reason, Contract and Law in Labor Relations, 68 Harv. L. Rev. 999 (1955), and from Cox, Reflections Upon Labor Arbitration, 72 Harv. L. Rev. 1482 (1959). A general listing of these characteristics, which apply in almost every instance to the strike settlement agreement in this case, was as follows:

"(1) Whereas in the case of commercial contracts, 'arbitration is the substitute for litigation,' in the collective bargaining situation, 'arbitration is the substitute for industrial strife.' 363 U. S. at 578.

(2) The collective agreement is a 'generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate.'

(3) 'One unique characteristic (of a collective agreement) is the number of people affected.' Cox, *supra*, at 1490.

(4) 'A collective bargaining agreement also covers a wide range of conduct and enormous variety of problems.'

(5) 'A labor contract operates prospectively over substantial periods . . . Not all commercial contracts, but surely those which are most familiar, relate to a single transaction . . . Since one can hardly foresee all the problems that will develop in an industrial establishment within even a single year, more scope must be left for decisions made in the course of performing the agreement.'

(6) 'The parties to a collective agreement share a degree of mutual interdependence which we seldom associate with simple contracts . . . When most parties enter into contractual relationship they do so voluntarily, in the sense that there is no real compulsion to deal with one another, as opposed to dealing with other parties. This is not true of the labor agreement.' 363 U. S. at 580."

2. If contracts are enforceable only with unions that represent a majority.

But if one defines "collective bargaining" as a process that takes place only with a majority representative, then equally serious and far-reaching questions are posed. If the lower courts in this case were in fact ruling that the agreement was 1. not a collective bargaining contract because it was not made with a majority representative, or 2. not a collective bargaining contract because the unions did not "represent" employees because they did not represent a majority (in either event, the majority concept principle is presented), then the public importance of this case is equally formidable as if the decisions below were founded solely on the grounds that a strike settlement agreement was not a typical collective bargaining contract.

The holding of the Court of Appeals for the Ninth Circuit in *Plumbers and Steamfitters Union v. Dillion*, 255 F. 2d 820, stands squarely for the proposition that a contract may be enforced under Sec. 301 without the necessity of majority representation. In that case, the union not only failed to represent a majority of employees of the employer, but it represented *none of them*, since it failed to supply him any workmen!

Contracts with unions that did not represent a majority of employees have had an important and impressive history in American labor relations.[7] Members-only contracts were the dominant kinds of agreements in the automobile and steel industries in the early years after 1937. This Court in *Consolidated Edison Co. v. NLRB*, 305 U. S. 197, 232, 236-238, specifically upheld the propriety of a

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[7] Brief for Petitioner, No. 284, *ILGWU v. NLRB and Bernhard-Altmann Texas Corp.*, pp. 92-95 incl., and authorities cited therein, particularly 2 LRRM 959, 964.

members-only contract and detailed its wholesome effects, at 305 U. S. 197, 237:

> "They simply constitute the Brotherhood the collective bargaining agency for those employees who are its members * * * Moreover, the fundamental purpose of the Act is to protect interstate and foreign commerce from interruptions and obstructions caused by industrial strife. This purpose appears to be served by these contracts in an important degree. Representing such a large percentage of the employees of the companies, and precluding strikes and providing for the arbitration of disputes, these agreements are highly protective to interstate and foreign commerce."

Members-only contracts are still in wide use today, as reports of the National Labor Relations Board indicate. The Board has frequent occasion to pass on such agreements when they are interposed as bars to representation elections, see *Pittsburgh Plate Glass Co.*, 111 NLRB 1210; *Liggett & Myers Tobacco Co.*, 98 NLRB 1330; *Cargo Packers*, 109 NLRB 1184; *Solventol Chemical Products*, 113 NLRB 617, and many others. While members-only agreements do not bar representation elections, they often serve highly useful industrial and social purposes, as this Court recognized in *Consolidated Edison Co., supra.*

The pre-hire agreements now permitted by Sec. 8(f) would not involve majority representation, since they would be executed before the hiring of any employees at all. The outside election agreement as typified in *United Public Workers v. University of Chicago, supra*, could not have involved majority representation, since the union was seeking to establish its majority by the electoral process.

There are other agreements between employers and unions where it may not always be established that a

union represents a majority at the time of execution of the agreement. The complexities which may be involved in this kind of situation undoubtedly contributed to this Court's grant of a petition for certiorari in *ILGWU v. NLRB and Bernhard-Altmann Texas Corporation*, No. 284, now pending, and the complexities flowing from any holding that a contract between an employer and a union may not be enforced under Sec. 301 if at the time of execution, the union did not represent a majority. would be equally of great significance. Yet this seems precisely what the lower courts in this case are holding, if they rest upon the concept that a collective bargaining contract was not involved because the unions did not represent a majority of the employees.

If the lower courts were holding, as we believe their unarticulated reasoning indicates, that the agreements were not collective bargaining contracts because the unions did not "represent" employees, then they are in complete derogation of the scope and intent of this Court's holding in *United States v. Ryan*, 350 U. S. 299. There the argument was made that the term "representative," in Sec. 302 of the Act should be narrowly construed to mean only "exclusive bargaining representative." This is analogous to the underlying rationale of the lower courts in this case, who were in effect saying that the term "representing" must mean "exclusive bargaining representative," or "majority representative," if this was in fact the basis for the ultimate rulings.

This Court disposed of this narrow approach in *Ryan* when it said:

> "It is insisted that this interpretation clashes with the use of the term 'representative' in various sections of the NLRA. In the majority of the examples given the scope of the term is made clear by other words in the provisions themselves (f.n. 7). But further, the

> provisions in the LMRA that 'representative' shall have its NLRA meaning is no more applicable to Sec. 302 than to any other section of the LMRA, and in several other sections of that Act it is patent that 'representative' cannot be construed to include only the exclusive bargaining representative. For example, Sec. 204(a) refers to 'employees and their representatives,' and Sec. 211(a) refers to 'interested representatives of employers, employees, and the general public.' There are other examples, but these are sufficient. If the severely restricted construction contended for the word 'representative' is inapplicable to one section of the LMRA, there is no compulsion to apply it to any other section."

The same reasoning applies here. Furthermore, if Congress had in any way intended to confine the term "representing" to majority representative, it could have easily said so, as it did in other provisions of the Act, such as Sec. 8(a)(5), Sec. 8(b)(3), Sec. 8(d). If the lower courts were rejecting jurisdiction because of the lack of majority they would have had to interpret Sec. 301 to read in this manner: "Suits for violation of contracts between an employer and a labor organization representing employees *subject to the provisions of Sec. 9(a)* in an industry * * *" which is an insertion of critically important words that simply are not there.

Therefore, if the courts below were holding that "only" a traditional collective bargaining contract can be enforced under Sec. 301, this case presents issues of great public importance in the establishment of industrial peace. If, on the other hand, the courts were holding that the strike settlement agreement involved in this case was not a collective bargaining contract because the unions did not represent a majority of the employees involved, then the issues of are equally compelling importance. Either view is sufficient to support a grant of the writ.

(b) POTENTIAL CONFLICTS BETWEEN COURTS OF APPEALS ARE INVOLVED.

If the holding of the Court of Appeals was based on the proposition that only traditional collective bargaining contracts may be enforced under Sec. 301, such ruling is in potential conflict with that of the Court of Appeals for the Fifth Circuit in *Lodge No. 12, IAM v. Cameron Iron Works, supra*, although the strike settlement agreement was tied in with a traditional collective bargaining agreement in that case. The decision below is in square opposition to the District Court ruling that enforced a strike settlement agreement in *Farrand Optical Co., supra.*

If the holding of the lower courts was based upon the lack of majority status of the unions, it is in conflict with the Court of Appeals for the Ninth Circuit in its decision in *Plumbers & Steamfitters Union v. Dillion, supra*, even though that holding did not discuss or treat the majority concept. This is so because the union there represented no employees of the particular employer at all. In addition, as we have already pointed out, if this was in fact the basis of the holding, then the necessarily restrictive meaning given to the word "representing" is contrary to this Court's holding in *United States v. Ryan, supra.*

(c) THE ERRONEOUS RULINGS BELOW DRASTICALLY INTERFERE WITH THE NATIONAL LABOR POLICY.

This Court has stated over and over again the importance of the national policy as established by legislation in preventing strikes and industrial discord. This was a fundamental consideration in *Consolidated Edison Co. v. NLRB supra*, has been re-stated time and time again, was enunciated once more in *Lincoln Mills, supra*, and repeated in the awareness in *Warrior and Gulf, supra*, of the sub-

stitution of "a regime of peaceful settlement for the older regime of industrial conflict." Courts, in any interpretation of Sec. 301, must not ignore the impact of the national labor policy, *Lewis v. Benedict Coal Co.*, 361 U. S. 459. Regrettably, the same lower court that wholly ignored the impact of the national labor policy in *Benedict Coal Co.* has repeated its neglect of that important consideration in this case.

Congress, when it enacted Sec. 301, gave us a legislative history that indicates it did not want severe verbal limitations placed upon the meaning of that provision, which is another powerful indication of the national labor policy. This Court is referred to a comprehensive legislative history of Sec. 301 as appended to the dissenting opinion in *Lincoln Mills, supra*, which shows that H. R. 3020, the House bill that passed that body, contained in a revised Sec. 302 (a) the reference only to the word, "agreement," without any qualifying adjective. 353 U. S. at 516. H. R. 245, accompanying the bill, contained repeated references to suits for "contract violations" and "violations of contracts" without in any way qualifying the scope of the language.

In the Senate in 1947, S. 1126, the Taft bill that was passed, did have the phrase "collective bargaining," in it, and Senate Report No. 105 also spoke in terms of "collective bargaining contracts." 353 U. S. at 530. In addition, if one wishes to be pleasingly selective about his legislative history, ample references may be found in Senate proceedings to the use of the term, "collective bargaining," although no one even purported to give an exact definition of what the term meant.

In conference, however, the House version prevailed, all reference was deleted to collective bargaining, and

the language of the Act today in the use of the simple word "contracts" emerged. By eliminating the qualifying words, "collective bargaining," it is submitted that Congress intended to allow a far broader scheme to the enforcement of contracts between employers and unions that accorded with the national labor policy of promoting industrial peace. At least one District Court reached this same conclusion upon a careful examination of the legislative history, when it was said in *Burlesque Artists v. American Guild of Variety Artists*, ___ F. Supp. ___ (SD, NY 1958), 42 LRRM 2818: "In eliminating the 'collective bargaining' phrase Congress must have envisioned a broader scope for the word 'contracts'."

The legislative history goes to demonstrate that the holdings of the lower courts in this case are simply erroneous if they assumed that Congress allowed enforcement for "only" collective bargaining agreements. In addition, from the language of the statute itself, it is quite evident that Congress did not intend to limit the meaning of the term "contracts" to collective bargaining contracts alone. Section 301(a) provides for enforcement of "contracts" between labor organizations, as well as "contracts" between an employer and a labor organization. The "contracts" between labor organizations which Congress provided might be enforced in the federal courts obviously are not "collective bargaining contracts." Therefore, if the phrase "contracts" as applied to suits between labor organizations could not have been intended to be limited to collective bargaining contracts, there is no sound reason in policy why the same term—"contracts"—must mean collective bargaining contracts in suits between an employer and a labor organization. *United Textile Workers v. Textile Workers Union of America*, 258 F. 2d 743 (CA 7, 1958).

But the harmfulness of the error is not so much in being wrong, but in placing serious impediments in the way of the national labor policy, and that is the important issue in this case upon which we seek review. We are certain, however, that this Court, as a principal declarant of the national labor policy as enacted by Congress, is more fully aware of the importance of this issue than we can demonstrate. But its language years ago in *Consolidated Edison, supra,* at 305 U. S. at 237, still has important meaning for this case, when it was said:

"Moreover, the fundamental purpose of the Act is to protect interstate and foreign commerce from interruptions and obstructions caused by industrial strife." This settlement agreement did exactly that, by settling a serious strike and terminating picketing and boycotting in a major American city. "This purpose appears to be served by these contracts in an important degree." This purpose was admirably served by the strike settlement agreements in this case, as is readily apparent to everyone. "Representing such a large percentage of the employees of the companies, and precluding strikes and providing for the arbitration of disputes, these agreements are highly protective to interstate and foreign commerce." These words apply here with equal force. Petitioners represented great numbers of employees of the companies when these agreements were signed, and they precluded any further strikes and boycotting, and provided for the arbitration and peaceful settlement of disputes through the L-M-C. As such, these agreements are "highly protective to interstate and foreign commerce."

When one views the stake of industrial peace in these agreements, it is indeed difficult to understand why the lower courts were more concerned with finding ways to

eschew jurisdiction than in decreeing an enforcement which would have a wholesome effect. The national policy issue is critical; it has been ignored totally; its needs reinstatement to its proper place; only review by this Court can correct the egregious errors below and re-emphasize again for the guidance of all lower federal courts that the cause of promotion of industrial peace simply must be taken into account in dealing with any "contracts" under Sec. 301 of the Act.

CONCLUSION.

For all the reasons hereinabove set forth, petitioners respectfully urge that this petition for a writ of certiorari be granted.

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APPENDIX A.

OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION.

MEMORANDUM OPINION.

(Filed December 21, 1959.)

KLOEB, *J.*:

Plaintiffs filed this action in this Court pursuant to Section 301 of the Labor-Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. A., Sec. 185 (a).

The amended complaint filed June 19, 1959 outlines two causes of action against the defendants, and prays in the first cause of action for an order of the Court requiring the defendants to permit non-employee representatives of plaintiffs to have access to areas of the stores of defendants, to wit, employees' cafeterias, which are not open to customers. In connection with the second cause of action, plaintiffs seek an order of the Court requiring the defendant LaSalle's to place two employees who were returned to work after the strike had ended on December 24, 1958, in their position classifications, and at the precise stations in the Men's Furnishings Department that they had occupied prior to the strike.

Attached to the amended complaint is Exhibit A, a letter from defendant LaSalle's to the chairman of the Toledo Labor-Management-Citizens' Committee, a Committee that had been engaged in mediating the differences between the respective parties and matters involved in the strike, which letter was accompanied with a "Statement of Understanding," with exhibits, all being offered to the Labor-Management-Citizens' Committee by the defendant LaSalle's.

There is also attached to the amended complaint Exhibit C, which is a letter from plaintiffs addressed to the Labor-Management-Citizens' Committee, in which they agree to the conditions and guarantees of the "Statement of Understanding."

There are also attached to the amended complaint Exhibits D, E and F, which are documents pertaining to defendant Lion Dry Goods, Inc., and which are comparable to the LaSalle exhibits heretofore referred to.

Under date of June 29, 1959, defendants filed their answer to the amended complaint, in which they set up three defenses, first, that the Court lacks jurisdiction over the subject matter, second, that the amended complaint fails to state a claim against either defendant upon which relief can be granted, and, third, that there is not in existence a contract between the plaintiffs and the defendants or either of them, as contemplated by or provided for in the Labor-Management Relations Act of 1947, and particularly Section 301 (a) thereof.

On October 15, plaintiffs filed their brief and, on October 26, defendants filed an answer brief. On November 2, plaintiffs filed a reply brief.

On November 6, in connection with oral argument, the parties filed a stipulation, which reads in part as follows (pages 2 and 3):

> "It is further stipulated by and between counsel for the parties that the plaintiff Unions and the defendants, individually, have not engaged in collective bargaining with respect to wages, hours and other terms and conditions of employment pertaining to employees of either of the defendants or for the purpose of the negotiation of an agreement concerning wages, hours, or other terms of employment, or any questions arising thereunder, or negotiations for the execution of a written contract incorporating therein

any agreement negotiated or reached between the parties; and it is further stipulated between counsel that none of the rates of pay, wage schedules, terms and conditions of the personnel policy and program, or other provisions or conditions contained in the entire plaintiffs' Exhibit B were negotiated as a result of bargaining or negotiations between either of the defendants and the Toledo Labor-Management-Citizens Committee acting for or on behalf of the plaintiff Unions; and it is further stipulated that all of the provisions contained in plaintiffs' entire Exhibit B, with the exception of Item No. 40 appearing at the last page of said exhibit, were in force and effect prior to December 24, 1958. Nothing in this paragraph is to preclude the Court from finding that the settlement of Dec. 24, 1958, was a collective bargaining agreement.

"It is further stipulated by and between counsel for the parties that the employee cafeterias in the downtown stores of the defendants and of the Lamson Brothers Company are located in areas in each of the stores not open to customers; and it is further stipulated between counsel that the LaSalle employees, McGinnis and Thal, were, prior to leaving their employment because of a strike on or about November 23, 1957, employed as salesladies in the Men's Furnishings Department in the highest wage classification provided in the wage schedules then in effect, and that upon their return to work at LaSalle's after December 24, 1958, each was employed as a saleslady in the Men's Furnishings Department in the highest wage classification provided in the wage schedules then in effect, and that the only difference in their work assignments upon their re-employment after December 24, 1958 was in the station to which each was assigned to work within the Men's Furnishings Department; the one formerly assigned to the station where men's shirts were sold was assigned to the station where men's sweaters were sold, with

the other being assigned to stations in reverse of the ones just mentioned, that is, her later assignment being shirts as compared to her former assignment of sweaters."

It appears that, in November of 1957, plaintiffs, who at some prior time had been the recognized bargaining agents for the Retail Associates, Inc., comprised of four downtown department stores in Toledo, Ohio, and including the two defendants herein, called a strike against the four members of the Retail Associates, Inc. During the period of the strike, from November of 1957 to December 24, 1958, plaintiffs were not and do not claim to have been and are not now the recognized majority representatives of the employees of defendants. They do not claim to have such rights. They admit that they do not represent a majority of the employees of the defendants, but they say that they do represent some employees and that because of this representation they are entitled to petition for the enforcement of a contract under Section 301 (a).

A few days prior to December 24, 1958, a plan was advanced by the chairman of the Toledo Labor-Management-Citizens' Committee whereby it was suggested that, if defendant LaSalle's would re-employ the strikers, plaintiffs would disclaim that they represented a majority of the employees of defendants. At that particular time LaSalle's was the only store where workers were out on strike.

Upon the presentation to the Labor-Management-Citizens' Committee of the exhibits heretofore referred to and that are attached to the amended complaint, picketing ceased and the strike was declared off. Employees of defendants LaSalle's were restored to work in due course in accordance with the Statement of Understanding.

It appears now that the defendants refuse to permit certain representatives of plaintiffs to enter the employees' cafeteria for the purpose of soliciting membership. This the plaintiffs complain of in their first cause of action in the amended complaint. Paragraph 6 of Exhibit B attached to the complaint reads in part as follows:

> "* * * Nothing herein shall preclude an employee representative from entering areas of the store which are open to customers; or from communicating with employees, provided such communication is on the employee's non-working time and in no way interferes with the operating of the business."

Defendants claim that the employees' cafeteria is an area which is not open to customers and that, therefore, plaintiffs' agents are precluded from communicating with defendants' employees in these areas. Plaintiffs are of the opinion that they have a right to communicate with defendants' employees in these areas provided such communication is on the employees' non-working time and in no way interferes with the operation of the business of the defendants.

Plaintiffs' second cause of action is based on the ground that, while employees McGinnis and Thal, who up to December 24, 1958, were striking employees, and were re-employed as salesladies in the Men's Furnishings Department following their return to work, they were not again stationed at the exact counters theretofore occupied by them but that they were caused to exchange their positions at the shirt and sweater counters. There is no dispute but that the rate of pay was not reduced upon their return to work and that their earnings and earning opportunities are not changed.

The grounds relied upon in these two causes of action appear to be tenuous indeed and to be based on grievances that are not weighty in character. However, they do provide a "causus belli." Whether there is justification for taking the time of a Court because of these differences between the parties is open to grave question.

It is plaintiffs' position that the Statements of Understanding presented by defendants to the Labor-Management-Citizens' Committee and the subsequent concurrence in these statements by plaintiffs constitute a contract, at least a contract for the benefit of plaintiffs, and that it is, therefore, such a contract as is contemplated by Section 301 (a) of the Act.

Section 301 (a) of the Act, 29 U. S. C. A. Sec. 185 (a), reads as follows:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

It is the contention of the defendants that, while Section 301 (a) refers to contracts between an employer and a labor organization representing employees, this has reference to collective bargaining contracts, or agreements arrived at through collective bargaining, and could not have reference to the situation that obtains here.

From a study of the legislative background of the Act, and from certain decisions that we have examined, we are of the opinion that the strike settlement agreement that was concluded on December 24, 1958 is not such a contract as is contemplated by Section 301(a) of the Act, and that,

therefore, we do not have jurisdiction over the subject matter.

The plaintiffs have cited and apparently rely upon the cases of *Local 19, etc. v. The Buckeye Cotton Oil Company*, 236 Fed. (2d) 776, and *A. L. Kornman Company v. Amalgamated Clothing Workers of America*, 264 Fed. (2d) 733, cert. den. Oct. 12, 1959.

These are cases that were decided by the Sixth Circuit Court of Appeals but, upon examination, we find that they both grow out of disagreements over existing collective bargaining agreements that were duly entered into by the parties under and in accordance with the provisions of the Act.

In the case at bar, the Statements of Understanding specifically point out that nothing contained therein is to be construed as giving recognition to the Union unless, at some future time within the discretion of the Union, the Union is certified as having been chosen by a majority of employees in a single store unit election conducted by the National Labor Relations Board. At no time have plaintiffs been so certified by the National Labor Relations Board. The Statements of Understanding further provide that the Union agrees that it will not request bargaining rights unless it proves its right to represent the employees, and that the employer will not recognize any Union except upon certification by the National Labor Relations Board.

We believe that the Act, in lodging authority in any District Court of the United States, contemplates such authority to be exercised where there has been a violation of a contract that had been entered into between an employer and a labor organization representing employees in an industry affecting commerce and that it thereby contemplates a collective bargaining agreement. The agreement that we are here considering is a strike settlement agree-

ment which we cannot construe as having been entered into for the benefit of plaintiffs.

In the case of *Schatte, et al. v. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of United States and Canada, et al.*, 84 Fed. Supp. 669, aff. 182 Fed. (2d) 158, cert. den. 340 U. S. 827, we find the following (p. 672, par. 4):

> "Whatever else may be said (and a great deal has been said in scores of pages of briefs and more than three full days of argument), any right of recovery under Section 301 must rest upon a *contract* and its asserted violation. *The whole Act relates to labor contracts, hence it must be a contract contemplated by the Act, i.e., a collective bargaining contract or contract relating to fair or unfair labor practices.* * * *" (Emphasis supplied.)

On page 673, pars. 7 and 8, we find the following:

> "The plaintiffs contend that in any event they are appropriately parties plaintiff under Rule 23, Federal Rules of Civil Procedure, 28 U. S. C. A., relating to class suits. Whether they do or could qualify under that rule is not necessary to determine as the provisions of Sec. 301 are inconsistent with Rule 23, Federal Rules of Civil Procedure, and must therefore prevail. *Sec. 301 is a special and limited grant of jurisdiction which must be strictly construed.* This is especially so in the light of the history of legislation dealing with labor relations and disputes such as the Clayton Act, 15 U. S. C. A. § 17, the Norris-LaGuardia Act, 29 U. S. C. A. § 101 et seq., the Wagner Act, 29 U. S. C. A. § 151 et seq., and the Act under consideration." (Emphasis supplied.)

We are of the opinion that collective bargaining contracts between a Union and an employer were the only "contracts" intended to be actionable in a District Court of the United States under the provisions of Section

301(a), and that none of the factors which give substance to the rights of Unions to bring actions under Section 301 are present in this case, and particularly a contract between plaintiffs and defendants. We, therefore, conclude that the Court is without jurisdiction to entertain this case, and the complaint is, therefore, dismissed.

Defendants may prepare and file findings of fact and conclusions of law drawn in accordance with this Memorandum Opinon within fifteen (15) days, and the plaintiffs may, within ten (10) days thereafter, file any suggested amendments or additions thereto.

(signed) FRANK L. KLOEB,

United States District Judge.

Toledo, Ohio.

APPENDIX B.

OPINION AND ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, NO. 14,176, DECEMBER 15, 1960.

This appeal from the judgment of the United States District Court, dismissing the complaint of appellants, has been heard and considered upon the record and upon the oral arguments and briefs of the parties.

This court is of opinion that the district court correctly construed Section 301 of the Labor-Management Relations Act of 1947 (29 U. S. C. A., Section 185 (a)) and was free from error in holding that it had no jurisdiction over the subject matter of the litigation. The contract here involved is not a collective bargaining agreement between an employer and a labor organization representing its employees. We think that the trial court was correct in reaching the conclusion that collective bargaining contracts between a union and an employer are the only contracts intended to be actionable in a United States District Court under the provisions of section 301(a).

In our judgment, United States District Judge Kloeb was right in concluding that he was without jurisdiction in this case. He, therefore, properly dismissed the complaint.

Accordingly, for the reasons stated in the opinion of the District Judge, the judgment of the district court is affirmed.

It is so ordered.

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 850-73

RETAIL CLERKS INTERNATIONAL ASSOCIATION,
LOCAL UNIONS NOS. 128 and 633,

Petitioners,

vs.

LION DRY GOODS, INC.,
and
LASALLE'S DIVISION OF R. H. MACY & CO.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS,
FOR THE SIXTH CIRCUIT.

BRIEF OF RESPONDENTS IN OPPOSITION.

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OPINIONS BELOW.

The opinion of the United States District Court for the Northern District of Ohio, Western Division, is reported at 179 F. Supp. 564. The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 286 F. 2d, 236, and at 47 Labor Relations Reference Manual (LRRM) 2402.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the petition.

QUESTION PRESENTED.

Whether Sec. 301 (a) of the Labor-Management Relations Act gives a United States District Court jurisdiction in an action filed by a labor organization *not* a party to a contract with the respondents and a labor organization *not* recognized or certified as the bargaining agent for employees of the Respondents.

STATUTE INVOLVED.

Sec. 301 (a) of the Labor-Management Relations Act of 1947, 29 U. S. C. Sec. 185 (a), is the only statute with which we are concerned in this case.

It read as follows:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT.

In November of 1957 the appellant unions called a strike against the members of Retail Associates, Inc., a multi-employer association comprised of four downtown department stores in Toledo, Ohio.

The Respondents herein were members of Retail Associates, Inc. [Note: On December 24, 1958, and for

many months prior thereto the multi-employer association of Retail Associates, Inc. was not in existence.]

During the period of the strike, from November, 1957 to December 24, 1958, the appellant Unions were not recognized by the Respondents as the majority representative of the employees of the Respondents.

The appellant Unions do not claim that at the time of the filing of the action in the United States District Court they were recognized as, were certified as, or were the representative of the majority of any unit of employees of either Respondent.

A few days prior to December 24, 1958, a plan was advanced by the Toledo Labor-Management-Citizens Committee (a local mediation agency) whereby it was suggested that if the Respondent Lasalles would re-employ the strikers (the strikers having been permanently replaced), the appellant Unions would disclaim that they represented a majority of the employees of either of the Respondents.

At that particular time Lasalles was the only store where workers were actually out on strike. Also at that particular time employer petitions for an election among the employees of both Respondents were pending before the National Labor Relations Board.

On the basis of this proposal from the mediation agency the employees of Lasalles who left their jobs were offered reinstatement. As the result of Lasalles offering to re-employ these workers, the appellant Unions unequivocally disclaimed the right to bargain for employees of the Respondent employers until such time as they were certified as having been chosen as bargaining representative by a majority of employees of each employer in an election conducted by the National Labor Relations Board.

The petitions for elections were withdrawn. (J. A. 9a, 32a, 44a, 45a.)

At the request of the mediation agency, each of the Respondents herein handed the Chairman of the agency a "Statement of Understanding" and attached thereto, at the agency's request, as Exhibit "A", the wage schedules then in effect in each store and as Exhibit "B" a statement of the company personnel policy and program.

The "Statement of Understanding" from the Respondent Lasalles, together with the aforesaid Exhibits, is to be found at pages 8a through 29a of the joint appendix in the record. The "Statement of Understanding" from the Respondent Lion Dry Goods, Inc. is set forth at pages 32a and 33a of the joint appendix in the record. Exhibits "A" and "B" referred to in the "Statement of Understanding" are the same as those attached to the "Statement of Understanding" given by Lasalles to the mediation agency and set forth in the joint appendix as above indicated.

ARGUMENT.

The issue in this case is, in our opinion, comparatively simple and, to say the least, uniquely narrow. It is impossible, we believe, through an exercise in semantics or in shading the facts, to convert the case into one warranting review by this Court on certiorari.

That this is true is clearly demonstrated by these few facts from the Record (Joint appendix, pages 40a and 41a):

1. The appellant Unions and the Respondents, individually or otherwise, have not engaged in collective bargaining since the strike in November, 1957, with respect to wages, hours, and other terms and conditions of employment pertaining to any employees of either of the Respondents or for the purpose of negotiation of any agreement concerning wages, hours, or other terms of employment, or any questions arising thereunder, or negotiations for the execution of a written contract incorporating therein any agreement negotiated or reached between the parties on any subject matter;

2. None of the rates of pay, wage schedules, terms and conditions of the personnel policy and program or other provisions or conditions contained in the Exhibits attached to the respective "Statements of Understanding" heretofore referred to were negotiated as a result of bargaining or negotiations between either of the Respondents and the Toledo Labor-Management-Citizens Committee acting for or on behalf of the appellant Unions;

3. All of the provisions contained in the aforesaid Exhibits attached to the "Statement of Understanding" given by each of the Respondents to the mediation agency, with one exception not pertinent to this case, were in force and effect prior to December 24, 1958.

From these facts two questions arise, the answers to which are dispositive of this case. These questions, discussed consecutively, are as follows:

Is a statement given to a mediation agency a contract within Section 301 of the Labor-Management Relations Act of 1947 entitling a labor union **which does not represent the employees of the employer** involved the right to maintain an action in a Federal District Court.

The Courts below correctly said No.

(a) Are the statements of understanding of the strike settlement conditions given to the mediation agency by the respondents (Exhibit B in J. A. 8a and Exhibit E, 32a) contracts between employers and a labor organization representing employees as is claimed by the appellant unions?

The appellant Unions filed an action in the District Court under and by virtue of the provisions of Section 301 of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. A. Sec. 151, et seq.

So far as it is pertinent to this action, Section 301 of the Labor Management Relations Act of 1947 provides:

> "*Suits for violation of contracts between an employer and a labor organization representing employees* in an industry affecting commerce as defined in this Act or between any such labor organizations, may be brought in any District Court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." (Italics ours.)

The relief sought by the appellants in their first cause of action was an order from the Court requiring the defendants to permit *non-employee representatives of the unions* to have access to areas of the stores which are not open to customers.

In the appellants' second cause of action they sought an order requiring the defendant LaSalle's to place two employees, who were returned to work after December 24, 1958 in their *former position classifications,* at stations in the department selected by the employees rather than by management.

The appellants, in bringing their action, relied solely upon the provisions of Section 301 of the Labor-Management Relations Act, *supra,* claiming that there is in existence a contract between the respondents and the appellant labor organizations.

The appellants, in effect, claim that a statement of understanding given to the Toledo Labor-Management-Citizens Committee by each store constitutes a contract within the contemplation of Section 301 of Labor-Management Relations Act, *supra,* and that by reason thereof they, the unions, were not only proper parties to bring such an action in that Court, but that they, as unions, are, as claimed in their first cause of action, entitled to specific performance of an arbitration clause in a collective bargaining agreement.

The appellants further claim, in effect, that they are proper parties to bring this action on behalf of two individual employees of LaSalle's, seeking specific performance of an arbitration agreement.

In other words, appellants assert that there is in existence collective bargaining agreements between them and each of the Respondents and that the collective bargaining agreements contain an arbitration clause for the benefit of the appellants as labor organizations and for the benefit of individual employees of the stores and further, by reason thereof, the arbitrators (LMC) have made decisions which can be enforced by a Federal District Court.

It is the contention of the respondents that a contract as contemplated by Section 301 of the Labor Management Relations Act of 1947 does not exist between the unions and either of the respondents.

It necessarily follows that if there was no contract in existence between either of these employers and the appellant unions, the District Court did not have jurisdiction.

The District Court found that (J. A. 49a and 50a):

1. "The 'statement of understanding' given by each of the defendants to the Toledo Labor-Management-Citizens Committee on December 24, 1958, was a strike settlement statement.

2. "The plaintiffs are not now and were not on December 24, 1958, the recognized majority representatives of the employees of the defendants, or either of them.

3. "The statements of understanding given the Toledo Labor-Management-Citizens Committee are not collective bargaining contracts negotiated by or on behalf of the plaintiffs with either of the defendants.

4. "There is no existing collective bargaining contract between the plaintiffs and either of the defendants."

In order for the District Court to have jurisdiction there must be in existence a collective bargaining agreement between the unions and each of the respondents as is contemplated by the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. A. 151 et seq.

This is so because the appellants brought their action pursuant to Sec. 301 of that Act which provides for "suits for violation of *contracts between an employer and a labor organization representing employees* in an industry affecting commerce * * * without respect to the amount in controversy or without regard to the citizenship of the parties."

While Section 301 refers to contracts between an employer and a labor organization representing employees, we do not think there can be any doubt that this means collective bargaining agreements. We are not aware of a reported case which does not, in discussing Section 301 as that section applies to suits between employers and labor organizations, confine its discussion of the rights of either employees or labor unions as those rights arising out of collective bargaining agreements.

This being true, was there a collective bargaining agreement in existence between labor organizations representing employees of the stores and either of the respondents?

We think not.

Sub-section D of Section 8 of Title I of the Labor Management Relations Act of 1947 defines what it means to bargain collectively. It is this:

> "To bargain collectively is a performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, for the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession * * *."

It would appear, then, that a contract between an employer and a labor organization as contemplated by Section 301, *supra*, is a contract covering wages, hours and other terms and conditions of employment negotiated and executed by an employer and a representative of employees *mutually obligated to so negotiate*.

The appellants do not claim that any form of collective bargaining or negotiations with respect to wages, hours, and other terms and conditions of employment or for any kind of an agreement or contract, or any question arising thereunder, ever took place between the appellants and either of the respondents since November 23rd of 1957.

Exhibits B and E (J. A. 8a and 32a) clearly state that the statements of understanding and the contents thereof are not to be construed as giving recognition to the appellants unless at some future time the Union is certified as having been chosen by a majority of employees in a single store unit election conducted by the National Labor Relations Board. In its Amended Complaint the Union set out that it would not request bargaining rights unless and until it proves its right to represent the employees after being certified as the majority representative as a result of an N. L. R. B. election.

To say that a labor organization which admits that it does not represent a majority of the employees, and which admits that it does not claim recognition as the bargaining agent for employees of the respondents, and which admits it will not request bargaining rights as representative of employees of the respondents, is a party to a collective bargaining agreement, as contemplated by Section 301, defines reason and logic.

This characterization would also apply, it seems to us, to the contention that the statement of understanding of the conditions of the strike settlement is a collective bargaining agreement within the contemplation of Section 301, *supra*.

In the statement of understanding handed to the mediation agency on December 24, 1958 by each of the respondents, it was, we repeat, stated that the Union would

not request bargaining rights or demand recognition until it proved its right to represent the employees as the result of an N. L. R. B. election.

In other words, here was a clear disclaimer of representation rights by the unions. If they do not claim to represent the employees of either of the stores, and will not claim to represent the employees of either until after being certified by the N. L. R. B., a fact which they fail to allege in their Amended Complaint, it would, of course, be impossible for them to be a party to, or beneficiary of, a collective bargaining contract, a necessary prerequisite to be able to sue under Section 301.

It would appear, then, that the lower Court lacks jurisdiction over this action because of the absence of a collective bargaining agreement between the defendant employers and the plaintiff labor organizations.

(b) Did the December 24, 1958 Statement of Understanding Create a Contract Between the Appellees and Their Respective Employees?

If the answer to this question, on the basis of the pleadings and the evidence, stipulated or otherwise, is "Yes," then the lower court lacks jurisdiction under Section 301 of the Labor Management Relations Act of 1947 because *Section 301 of that Act only confers jurisdiction upon the District Court over suits for violation of contracts between an employer and a labor organization representing employees*—at least, so far as Section 301 is pertinent to this case.

If the answer to this question is "No," then obviously the appellants cannot bring this action under Section 301 on behalf of the employees or on any other basis. There would be no jurisdiction in the District Court to hear such a suit.

The law involved in the questions and issues in this case springs from Section 301(a) of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. A. Sec. 185.

That section provides:

> "*Suits for violation of contracts between an employer and a labor organization representing employees* in an industry affecting commerce as defined in this Act or between any such labor organizations, may be brought in any District Court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." (Italics ours.)

There have been two landmark cases decided by the United States Supreme Court involving the contract rights that may be enforced in suits brought in the federal district courts under Section 301, and those that may not.

While it is the position of the respondents that Section 301 does not have an application to this action, a consideration of the law as laid down in those cases will be enlightening and of assistance to us here.

These principal cases are:

Association of Westinghouse Employees v. Westinghouse Electric Corp. (1955) 348 U. S. 437, 75 S. Ct. 489, 99 L. Ed. 510;

Textile Workers Union etc. v. Lincoln Mills, (1957) 353 U. S. 448, 77 S. Ct. 912, 1 L. Ed. (2d) 972.

In the first of these *(Westinghouse)* the Court ruled that Section 301 did not give a federal court jurisdiction over a Union's suit for back wages owed individual employees under the *Union's* contract.

In the *Lincoln Mills* case the court held that Section 301 gave a federal court jurisdiction to order specific per-

formance of an arbitration clause in a collective bargaining agreement negotiated by the Union and to which the Union was a party.

The distinction between the two cases apparently was that in the latter case *(Lincoln Mills)* the contractual obligation ran to the Union while in the Westinghouse it ran to individual employees.

These two cases thoroughly discuss the legislative history of Section 301 and the circumstances which give rise to permitting suits in the district courts without regard to the usual jurisdiction requirements.

A reading of the principal cases makes it clear that collective bargaining contracts between a union and an employer were the only contracts intended to be actionable under Section 301 in suits between employers and labor organizations.

In the *Westinghouse* case the court held that the Union could not maintain an action under Section 301 to enforce uniquely personal rights; in this case claims for holiday pay for 4000 employees under provisions of a contract between the Union and the Company.

The right to holiday pay, the court held, was in the employee under his individual employment contract, the contract between the Union and the Company becoming a part of the individual employment contract upon hiring.

The right to sue in these cases arises out of a contract negotiated under the provisions of Federal law—The Labor Management Relations Act of 1947.

—In the concurring opinion of Chief Justice Warren, joined in by Justice Clark, in *Westinghouse* this language is found:

> "Thus the contracts sued upon in Section 301 actions will have been entered into in accordance with federal law * * *."

and again this:

> "Since the contract entered into through provisions of the Labor Act creates rights over which Congress has legislative authority, a breach of the contract is likewise within its power, etc. etc."

In *Lincoln Mills*, for instance, Justice Douglas said that in including Section 301 in the 1947 enactments, Congress was also interested in promoting collective bargaining that ended with agreements not to strike.

> "The agreement to arbitrate grievance disputes," Justice Douglas said, "is the quid pro quo for an agreement not to strike."

The entire tenor of the history, he repeats, indicates that the agreement to arbitrate grievance disputes was considered quid pro quo of a no strike agreement. This very necessary element which went to make up the basis of the Court's holding that a labor organization could maintain such an action is *glaringly* absent here.

In a concurring opinion Justice Burton pointed out that the Union should have the right to maintain an action in these circumstances requiring enforcement of a collective bargaining agreement provision to arbitrate certain grievances since it involved an obligation running to the Union—a Union controversy—and not uniquely personal rights of employees sought to be enforced by a union. Here there is no obligation running to the Union from the employers. (Pars. 5-6 Exhibit B, 9a J. A.)

The Court will notice that none of the compelling factors which give substance to the right of Unions to bring actions under Section 301 are present in this case, particularly a contract between a union representing employees of these employers within the meaning of the Labor-Management Relations Act of 1947 and the employers.

CONCLUSION.

In summary and in conclusion we suggest the following in support of our position that the lower court was correct in holding that it lacked jurisdiction:

1. Section 301 of the Labor-Relations Management Act contemplates contracts in effect and negotiated by parties obligated and competent to negotiate and contract.

2. The Unions here are not legally qualified to be a party to a contract unless and until they are *chosen by the employees* as their bargaining representative.

3. To hold that there was a contract here between these unions and the employees would be a clear violation of the rights guaranteed to employees by Section 7 of the Labor Management Relations Act of 1947 to be represented through representatives of their own choice or the right to refrain from engaging in any activity involving collective bargaining through labor organizations.

4. If these statements of strike settlement conditions were held to be a labor contract between the employers and the Unions, both would be guilty of violation of Sections 8(a)(1) and (2) and 8(b)(1)(A) of the Labor-Relations Management Act by entering into a contract when the Union had not been authorized by a majority of employees to act as their representative.

5. Inasmuch as Section 301 is expressly limited to suits for "violation of contracts between an employer and a labor organization representing employees * * *," it seems conclusive that the District

Court's judgment was correct. The relief sought should be denied and costs of this appeal assessed to the appellants.

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8. District Court's Findings.

The court's findings of fact provided (R. 49):

1. *The statement of understanding* given by each of the stores to the Toledo Labor-Management Citizens Committee *was a strike settlement statement.*

2. The unions were not the majority representatives of the employees of either of the stores.

3. The statements of understanding *are not collective bargaining contracts negotiated by or on behalf of the unions* with either of the stores.

4. *There was no collective bargaining contract between the unions and either of the stores.*

The Court's conclusions of law were:

1. *The statement of understanding* given by each store on December 24th *is not a contract as is contemplated by Section 301(a)* of the Act, and

2. The court is without jurisdiction over the subject matter of the action. (Emphasis ours.)

The United States Circuit Court of Appeals for the Sixth Circuit affirmed the judgment of the District Court. (R. 52.)

SUMMARY OF ARGUMENT.

1. At the outset we suggest the question of mootness in view of the fact that Locals 128 and 633, Petitioners here, ceased to exist as of January 1, 1960. Inasmuch as this information came to the attention of counsel at a late date, we take this means of making the Court aware of these facts, as is our duty.

The question suggested is whether the action abated by the demise of the Petitioners and whether it can be revived by the substitution of a new party so as to entitle a new, and different, local Union to all rights and privileges Locals 128 and 633 would have had, if they still existed, should the Court hold that the relationship between the stores and the L-M-C created a Section 301(a) contract to which the Unions became party and, by the same token, make a new local Union and its assets, under such a result, responsible for all the liabilities which could accrue therefrom prior to, and since, the demise of Locals 128 and 633.

2. Beyond the question of abatement and mootness, the only issue before this Court is whether the United States District Court had jurisdiction to entertain the action filed therein by the labor unions, on the claim of a right to do so by virtue of the provisions of Section 301(a) of the Labor-Management Relations Act. The jurisdictional question revolves around the question whether the Unions were party to a contract between an employer and a labor organization as contemplated by the Act.

3. The lower courts correctly held, referring only to suits between labor organizations and employers, that the contracts contemplated by Section 301(a) are contracts which result from collective bargaining between an employer engaged in commerce as defined in the Act and a labor organization representing the employees of such an

employer. The record here does not justify the interpretation given to the decisions of the lower courts by the Petitioners that the courts held that Section 301(a) suits are limited to actions which arise out of contracts between labor organizations and employers. Suits for violations of contracts between labor organizations are also suable under Section 301(a).

4. Considering the legislative history and cases decided by this Court, Section 301(a) actions involve contracts arising out of the practice and procedure of collective bargaining, a principal purpose regulated and safeguarded by the Labor-Management Relations Act. These actions would not, we submit, extend to the enforcement of understandings which are not made within, but completely beyond, the scope and framework of the Act. Section 301(a) should not be extended to an understanding which is not between a labor organization authorized to represent the employees of the employer but, instead, is with a third party who was not acting in place of, or on behalf of, the labor organizations involved and did not engage in collective bargaining with respect to wages, hours and other terms and conditions of employment with the employer.

5. The statement given to the Toledo Labor-Management Citizens Committee by Respondents was to record their understanding of the termination of the recognition strike the Petitioners had been conducting against Lasalle's and included therein the scope of the services the L-M-C was to make available to *all* employees of Lasalle's and the Lion Store, limited only by employment relationships covered by contracts between the stores and other labor unions. The statement of understanding between the Respondents and the L-M-C is not a Section 301 contract

for, in our opinion, Section 301 contemplates contracts between parties mutually obligated to engage in collective bargaining and legally competent to be a party to such contract.

It would seem that when the entire Labor-Management Relations Act is considered, a Section 301 contract would be one which would, at least, be between an employer engaged in commerce and a labor organization representing such employees by reason of being either certified or recognized as the bargaining agent. Such a contract would also, it seems to us, be one which defines with particularity the bargaining unit to which representation rights are claimed, or accorded, and would be one which contained the precise terms resulting from collective bargaining, as defined by the Act.

Such a contract should also, in order not to run contrary to the Act, be for a definite term and be subject to renegotiation at reasonable intervals and would be one one which resulted from the performance of a mutual obligation of an employer and the representatives of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment.

The statement given by the stores to the L-M-C stating the stores' understanding of the basis on which the strike was terminated fails to meet any of the criteria which appear to be necessary to have a contract intended by the Labor-Management Relations Act and be suable under Section 301(a).

6. Although *the petitioners did not base their District Court suit on a members only contract between the unions and the stores,* the Petitioners now assert that they are party to a members only contract and as such have a right to maintain the action in the District Court.

There is nothing in the statements of understanding given to the L-M-C by the stores to justify any assertion that the assurances given to the L-M-C concerning the treatment to be accorded their employees, and the services by L-M-C made available to individual employees, as set forth in the so-called arbitration provision (Item 4, R. 9), are to be limited to members of Locals 128 and 633. In fact, the opposite is apparent, i.e., the understanding between the stores and the L-M-C was intended to apply to all employees at Lasalle's and the Lion Store. This being true, a holding that these local unions were party to a Section 301(a) contract would necessarily mean that their representation rights would extend to all the employees of both stores. This Court recently held, *Ladies Garment Workers Union v. N. L. R. B.*, 366 U. S. 731 (1961), that a contract giving a union representing only a minority bargaining rights for all employees violated the Act and was invalid in its entirety.

ARGUMENT.

I. Has This Proceeding Become Moot?

During the later stages of preparing this brief counsel for the Respondents for the first time became aware of certain facts which suggest the question of mootness. As of January 1, 1960 the Petitioners here, Locals 128 and 633, no longer existed, according to the records of the United States Department of Labor, Bureau of Labor Management Reports.

Report No. 052080, filed sometime after March 18, 1960, by Local 128, contains the information that "as of January 1, 1960, this Local merged with Locals 633—954 and District Council No. 6, to form *a new Local 954.*" The report of Local 633, No. 052082, contained the same information.

The question suggested then is whether the action commenced by Locals 128 and 633 abated when a new Local was formed and the Petitioners here went out of existence.

II. District Court Jurisdiction Only Issue.

On the basis of the judgments of the lower courts, the issue here is necessarily a very narrow one. Simply stated, it is whether the unions had a right to maintain an action in the District Court under authority of 301(a) of the Labor-Management Relations Act, 29 U. S. C. Sec. 185(a), on the basis that they were party to a contract between an employer and a labor organization.

Therefore, we will attempt to confine our argument to the issue of jurisdiction and not consider here issues which are secondary to, and dependent upon the validity of the unions' claim that they are party to such a contract.

These secondary issues would include such questions as whether the unions had a right to bring suit for contract

enforcement as in *Textile Workers v. Lincoln Mills*, 353 U. S. 448 or whether that right would be limited to employees as in *Assn. of Westinghouse Employees v. Westinghouse Electric Corp.*, 348 U. S. 437; whether the unions, as unions, had a right to grieve or whether that right was limited to individual employees under item 7 (R. 10); whether the claim of arbitration rights was governed by contract, as in *Steelworkers v. American Manufacturing* (1960), 363 U. S. 564; whether the so-called arbitration clause is susceptible to an interpretation that covers the asserted dispute, as in *Steelworkers v. Warrior Navigation Co.* (1960) 363 U. S. 574; whether the so-called arbitrators decision was based on the collective bargaining contract, as in *Steelworkers v. Enterprise Wheel and Car Corp.* (1960) 363 U. S. 593, and other issues of fact and law raised in the answer to the complaint.

III. Scope of Lower Court Decisions.

At the outset it must be recognized that Section 301(a) is a special and limited grant of jurisdiction and must, in accordance with the settled rules of statutory construction, be strictly construed. It provides that actions may be brought in any District Court of the United States having jurisdiction of the parties without respect to the amount in controversy or without regard to the citizenship of the parties in two circumstances: (1) suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce, and (2) suits for violation of contracts between any such organizations.

The lower courts in this case were agreed that the contracts with which Section 301(a) concerned itself, *as between an employer and a labor organization representing employees in an industry affecting commerce,*

were contracts resulting from collective bargaining as contemplated by the provisions of the Act.

We do not claim that Section 301(a) suits are limited to those arising out of violation of contracts between an employer and a labor organization. We believe Section 301(a) also applies to suits for violation of *contracts between labor organizations.* We *do not* believe that the courts below held, or intended to hold, that the only contracts suable under Section 301(a) were contracts between an employer and labor organizations representing employees in industries affecting commerce.

While it is true that the lower courts did say that they were of the opinion that collective bargaining contracts between a union and an employer were "the only contracts" intended to be actionable in a District Court of the United States under the provisions of Section 301(a), we believe that it can be fairly stated that both of the courts were referring only to the type of contract which must be in existence between the employer and a labor organization. It seems clear that the lower courts' statement that collective bargaining contracts were the only contracts intended to be actionable under the provisions of Section 301(a) applied only to that portion of Section 301(a) relating to contracts between an employer and a labor organization. In Judge Kloeb's memorandum opinion (R. 48) he says:

> "None of the factors which give substance to the rights of unions to bring actions under Section 301 are present in this case, and particularly a contract between plaintiffs and defendants."

IV. What Kind of Contracts Did Congress Intend to be Actionable Under Section 301(a)?

The unions based their right to bring this action on Section 301(a) of the Act (R. 3) which provides *inter alia* for:

> "suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce."

Such suits may be brought without regard to the amount in controversy or the citizenship of the parties only if the plaintiff meets the test in (a) of Section 301, i.e., in our case, being a party to a contract between an employer and a labor organization representing employees in an industry affecting commerce.

At the threshold of this question, the logical source of information, it would seem, would be the Congressional Record where the legislative history of the Labor-Management Relations Act of 1947 makes it clear that when Congress passed that Act its purpose was to establish a framework within which the rights of labor and management were guaranteed and protected in furtherance of the policy of encouraging the practice and procedure of collective bargaining.[12]

Senator Taft, in answer to a proposal during the Senate debates that the measure being considered by the Senate be replaced by separate bills, each to include only the matter within the separate Titles of the proposed Act, had this to say (93 Cong. Rec. 4141):

> "I want to make one statement to show that the pending bill relates to one question. * * *. First, we have Title I which entirely rewrites the Wagner Act. Of course, the primary purpose of that Act is to assure

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[12] Section 1 of Title I of the Act.

collective-bargaining agreements between employer and employee.

"In Title II we change the mediation procedure. * * *. But what is the purpose of mediation? The purpose of mediation is to bring about collective bargaining agreements between employer and employees.

* * * * *

"What is the purpose of Title III? The purpose of Title III is to give the employer and the employee the right to go to the federal courts to bring a suit to enforce the terms of a collective bargaining agreement—exactly the same subject matter which is contained in Titles I and II. It is impossible to separate them."

In 93 Cong. Rec. 4262 we find this further statement by Senator Taft:

"Finally, we have a provision in Title III for bringing a lawsuit for breach of contract. Breach of what kind of contract? Breach of contract for collective bargaining."

On the same day Senator Smith told the Senate (93 Cong. Rec. 4281):

"And now we come to Title III, which is very brief, and merely provides for suits by and against labor organizations, and requires that labor organizations, as well as employers, shall be responsible for carrying out contracts legally entered into as a result of collective bargaining. That is all Title III does. * * *."

Representative Sabath in a vitriolic attack on the Conference Report on the day the House accepted the terms of the agreement between the Senate and House, placed the following comment in the record at page 6389 of 93 Cong. Rec.:

"Suits by and against unions"

"Waives present jurisdiction requirements in Federal courts of diversity of citizenship and amount in controversy when suit involves breach of collective bargaining contract."

When the House was considering the provision in H. R. 3020 which became Section 301(a), Representative Barden directed the following to Representative Hartley, the sponsor of the Bill in the House (93 Cong. Rec. 3656):

"In asking the question I want it understood that it is intended to make a part of the record that may thereafter be referred to as history of the legislation.

"It is my understanding that Section 302, the section dealing with equal responsibility under *collective bargaining contracts* in strike actions or proceedings in district courts contemplate not only ordinary lawsuits for damages but also such other remedial proceedings, both legal and equitable, as might be appropriate in the circumstances * * *." (Emphasis ours)

Representative Hartley, in response, said:

"The interpretation that the gentleman has just given of that section is absolutely correct."

When the Senate was first considering Senate Bill 1126, later tabled when the Senate amended H. R. 3020, it had in it the basic provisions of 301(a) as enacted. Senator Taft, in his opening statement explaining Senate Bill 1126, said (93 Cong. Rec. 3839):

"Title III of the Bill, on page 53, makes unions suable in the federal courts for violation of contracts * * *."

At 93 Cong. Rec. 4033, Senator Murray, in discussing the provisions of theSenate Bill said:

"Section 301 of the bill gives the federal district courts broad jurisdiction to entertain suits for breach of collective bargaining contracts in industries affecting interstate commerce * * *."

Senator Hatch, in discussing the proposed Act on May 12, 1947, said:

"I neglected to mention Title III which provides for suits against unions in their common name, for violation of collective bargaining contracts. * * *."

Then in the House minority report, No. 256 on H. R. 3020 in referring to Section 302, which became 301 of the Act, we find this:

"Section 302 of Title III has the dual purpose first of giving the Federal courts jurisdiction without regard to the amount in controversy, to entertain actions involving violations of collective bargaining agreements affecting commerce or where the court otherwise has jurisdiction of the cause."

In Senate report No. 105 on S. 1126, 80th Congress, first session, there are two references to the provisions of Section 301. The first is this:

"The committee Bill makes collective bargaining contracts equally binding and enforceable on both parties. * * *. and

"Section 301 is the only section contained in this Title. It relates to suits by and against labor organizations for breach of collective bargaining agreements * * *."

In the Senate Majority Report No. 105, Pt. 2, on S. 1126 we find this:

"Section 301 of Title II of the Bill gives the Federal District Courts broad jurisdiction to entertain suits for breach of collective bargaining contracts in industries affecting interstate commerce."

When the House passed H. R. 3020, the section under consideration here read this way:

"302(a) Any action for or proceeding involving a violation of an agreement between an employer

and a labor organization or other representatives of employees may be brought by either party in any District Court of the United States having jurisdiction of the parties without regard to the amount in controversy, if such agreement affects commerce, or the court otherwise has jurisdiction."

When the Bill passed in the House reached the Senate, the Senate tabled its own Bill S. 1126 and amended H. R. 3020 by striking out practically everything but the Titles and inserting in lieu thereof the parallel provisions of S. 1126. The Senate amendment read this way:

"301(a) Suits for violations of contracts concluded as a result of collective bargaining between an employer and a labor organization representing employees in an industry affecting commerce as defined by this Act, may be brought in any District Court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Section 301(a) in its present form was agreed upon in the conference between the Senate and the House and adopted.

"Suits for violations of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined by this Act, *or between any such labor organizations*, may be brought in any District Court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

(Portion emphasized by us appears in the law for the first time.)

During the Senate debates on the conference agreement Senator Taft read into the record a summary in detail of the principal differences between the conference agreement and the Bill passed by the Senate which con-

tained the following reference to Section 301. (93 Cong. Rec. 6445.)

> "Section 301 differs from the Senate Bill in two respects. Subsection (a) provides that suits for violation of contracts between labor organizations, as well as between a labor organization and employers, may be brought in the federal courts."

The petitioners' claim that Congress chose the term "contracts" deliberately and rejected the restrictive term of "collective bargaining contract" in its final draft of Section 301(a) appears groundless in light of this explanation by Senator Taft. It is clear that Congress changed the term "collective bargaining contract" to the word "contract" in the final version only because the addition of a provision for suits for violation of contracts between labor organizations made the change necessary in order that Section 301(a) be applicable to both situations.

In discussing Section 301(a) the House Managers' Report (93 Cong. Rec. 6380) pointed out that the original version of the House bill provided for such suits "if such agreements affect commerce." Then the report goes on to say:

> "Under the Senate amendment the jurisdictional test was whether the employer was in an industry affecting commerce or whether the labor organization represented employees in such an industry. The test contained in the Senate amendment is also contained in the conference agreement rather than the House bill which required that the contract affects commerce."

Thus the House Managers' Report makes it clear that in accepting the jurisdictional tests of the Senate bill, Sec. 301(a) was to provide a remedy for *suits* for the violation of contracts *between an employer* who was *engaged* in an industry affecting *commerce and a labor organization* which represents employees *in such an industry*.

Transposed over into our situation, this would mean, then, that to meet the jurisdiction test of Section 301(a) the labor organizations here would have to be labor organizations which represented employees (as that term is used in the Act) of Lasalle's or the Lion Store, each an employer in an industry affecting commerce.

The appendix to the dissenting opinion of Justice Frankfurter in *Textile Workers Union of America v. Lincoln Mills of Alabama,* 353 U. S. 448, 485, etc. is a comprehensive legislative history of the Labor-Management Relations Act. A reading of this appendix leaves one with the inescapable conclusion that the number one objective in the enactment of Section 301(a) of the Act was to make unions suable as an entity in the same manner as employers are subject to suits, with only the assets of the union liable for any recovery against the unions.

Preliminary to deciding the question of what substantive law was to be applied for the enforcement of *collective bargaining* agreements, this Court in *Lincoln Mills,* 353 U. S. 448, in construing Section 301(a) considered the nature of the problem with which Congress intended to deal. Justice Douglas, after referring to the decision rendered by Judge Wyzinski in *Textile Workers Union v. American Thread Co.,* 113 F. Supp. 137, said: (451):

> "That is our construction of 301(a), which means that the agreement to arbitrate grievance disputes, *contained in this collective bargaining agreement,* should be specifically enforced." (Emphasis ours.)

Justice Douglas in analyzing the legislative history of the Act pointed out (453) that both the Senate and the House indicated "a primary concern that unions as well as employees should be bound to collective bargaining

contracts" and "a concern with a procedure for making such agreements enforceable in the courts by either party."

Congress was also interested in promoting collective bargaining that ended with agreements not to strike, Justice Douglas said, 453, and 454, "thus collective bargaining contracts were made 'equally binding and enforceable on both parties.'" "Plainly," Justice Douglas said, "the agreement to arbitrate grievance disputes is the *quid pro quo* for an agreement not to strike."

Parenthetically we point out that neither item 7 of the statement of understanding between the stores and the L-M-C (R. 10) or the statements in their entirety (R. 9, 32) come within the areas discussed by Justice Douglas —collective bargaining agreements containing an agreement to arbitrate in return for an agreement not to strike.

The legislative history and this Court's decision in *Lincoln Mills, supra,* leads us to the answer that Congress intended that a contract to be actionable under Section 301(a) must be one which is the result of collective bargaining between an employer in commerce and a labor organization representing the employees of that employer.

V. Was There a Section 301(a) Contract Between Either Of the Stores and the Unions?

A point of beginning in considering whether there was a Section 301(a) contract between either of the stores and labor organizations representing employees in an industry affecting commerce is to evaluate the relationship of the parties to the suit at the time the strike at Lasalle's was terminated on December 24, 1958.

On November 23, 1957 the unions chose to abandon multi-employer collective bargaining and demanded bargaining rights on an individual store basis. In their efforts

to force Lasalle's to recognize the unions as bargaining agents for Lasalle employees, the union struck that store on November 23, 1957. The Lion Store, on whom similar bargaining demands had been made, was not struck. From November 23, 1957 through December 24, 1958 the unions were able to prevent a vote by the employees on both a three-store and single-store basis.[13] During this time the strike against Lasalle's continued—over bargaining rights, not economic issues.

It is conceded that the unions and Lasalle's have never engaged in collective bargaining. This is also true as to the Lion Store. It was also agreed that neither of the stores engaged in any collective bargaining with the L-M-C, as a representative for the unions or any employees of either store. (R. 40, 41.)

The peculiar facts of this case and the legislative history heretofore set forth compel the conclusion that the lower court was right when it said (R. 47) that the Act in lodging authority in any District Court of the United States, "contemplates such authority to be exercised where there has been a violation of a contract that has been entered into between an employer and a labor organization representing employees in an industry affecting commerce." The Act, the Court continued on to say, "contemplates a collective bargaining agreement."

A collective bargaining contract, as contemplated by the Act and, it follows, by Section 301(a) is a contract covering wages, hours, and other terms and conditions of employment negotiated and executed by an employer and a representative of the employees *mutually obligated to so negotiate*. That this is so seems evident from the definition of collective bargaining set forth in subsection (d) of Section 8 of Title I of the Act where it says:

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[13] Footnotes 4, 6, 7.

"To bargain collectively is a performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, for the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, such obligation does not compel either party to agree to a proposal or require the making of a concession * * *."

It would seem to follow that the contracts contemplated to be actionable under Section 301(a) would be those which meet certain minimum criteria such as being a contract between an employer and a labor organization which was either certified, recognized or authorized to act as the bargaining agent for the employees of such an employer and a contract which precisely defines the bargaining unit and a contract characterized as a labor contract, one which was the result of agreements reached through collective bargaining.

Other criteria for actionable Section 301(a) contracts would be that they be for a definite term and be open for renegotiation by employee representatives and employers at reasonable intervals and be agreements which resulted from a meeting of the minds of persons legally competent to enter into such contracts.

Measured against the circumstances out of which the understanding between the stores and the L-M-C arose and these criteria, the lower courts correctly held that the unions were not party to a Section 301(a) contract.

To say that the statement given to the L-M-C by the stores to record the conditions upon which the strike over representation and bargaining rights was terminated is a contract which can be specifically enforced in the District

Court by unions which do not, and have not, represented employees, would not, it seems to us, effectuate the purpose of the federal labor policy but, on the contrary, would be in contravention thereof.

It would impose upon all the employees of the stores a representative not selected by them and impose on the employer an obligation to recognize the unions as the representatives of the employees in the "continuous collective bargaining process" as this Court characterized grievance and arbitration procedures in *Steelworkers v. Warrior Navigation Co.*, 363 U. S. 574 (1960).

On the basis of the uncontradicted record that the unions had never been the bargaining representative of the employees of either of the stores and further that there had been *no* collective bargaining by the unions or anyone else with the stores and in view of the result which would follow, it would seem clear that to construct a Section 301(a) contract out of these circumstances would not only conflict with national policies but with a most recent decision of this Court; *Ladies Garment Workers Union v. N. L. R. B.*, 366 U. S. 731 (1961).

VI. Members Only Contract Here Would Constitute Unions Representative for All Employees.

The Petitioners argue (Pet. brief 24) and conclude that the lower courts were guilty of reversible error by indicating, if not holding, that only a majority or certified union may enforce a contract under Section 301. The Petitioners admit they arrived at this conclusion by assuming what they (the Petitioners) think the court's reasons would have been had the courts articulated their reasoning.

We suggest that there is no basis for such liberty being taken with the decisions of the lower courts. The judg-

ment of the District Court as set out in the opinion was (R. 48):

> "We are of the opinion that collective bargaining contracts between a union and an employer were the only 'contracts' intended to be actionable in a District Court of the United States under the provisions of Section 301(a), and that none of the factors which give substance to the rights of Unions to bring actions under Section 301 are present in this case, and particularly a contract between plaintiffs and defendants. * * *"

There is not one word in the judgment of the Circuit Court which justifies the assumption made by the Petitioners. (R. 52.)

Starting from the conclusion they reach by the use of the assumed, but false, premise, the Petitioners proceed to argue that contracts between minority unions for their members only and employers are enforceable under Section 301(a). Without going into an extended discussion of the merits of such a proposition we think it sufficient to say that if minority members only contracts are enforceable under Section 301(a), they too would be required to be contracts concluded as the result of collective bargaining between an employer and Union.

If the understandings between the stores and the L-M-C were held to be contracts within the meaning of Section 301(a), it would necessarily follow that the contracts here would be between labor organizations admittedly representing only a minority and each of the stores. Such a decision would give these minority labor organizations representation rights for *all* of the employees of the stores, contrary to the rights guaranteed and protected by Section 7 of the Act and would be in direct conflict with this Court's recent holding in *Garment Workers v. N. L. R. B.*, 366 U. S. 731 (1961).

In that case this Court invalidated the entire collective bargaining agreement because the employer recognized the union as the exclusive representative of the employees on the honest though mistaken belief that the union was the majority representative.

If the understandings here between the stores and the L-M-C are held to be contracts within the contemplation of Section 301, it would result in bringing into existence the exact situation condemned in the *Ladies Garment Workers' Union Case, supra.*

This is so because the understanding between the L-M-C and the stores *was not* restricted to those employees who were or are members of the Unions or restricted to strikers at Lasalle's.

Employees of the Lion Store had never been on strike but they would be affected by a ruling that these Unions have a right to maintain a Section 301(a) suit. The understanding between the stores and the L-M-C was intended and did cover all employees of the stores not covered by contracts between the stores and other unions. In the complaint filed in the District Court, the Unions do not allege or base their action on a members only contract.

A decree holding the understandings between the stores and the L-M-C to be Section 301 contracts would not only include the representation of all employees, but such a decree would grant the Unions such representation rights in perpetuity, or at least until such time as the Unions asked for an N. L. R. B. election. This is so because there is no time limitation within which the Unions must ask for an election (item 6, R. 10) in an effort to become the certified bargaining agent for the employees of the stores.

VII. In Re Petitioners Authorities.

We have been unable to find a reported case, involving a suit between an employer and a labor organization, that did not arise out of a collective bargaining contract, including the two relied upon by the Petitioners; *Lodge No. 12 International Ass'n. Machinists v. Cameron Iron Works*, 257 F. 2d 467 and *Ferrand Optical Co. v. Electrical Workers, Local 475*, 143 F. Supp. 527.

In each of those cases there was a collective bargaining contract in force when the strikes out of which the settlements grew started. In *Machinists v. Cameron*, the strike occurred during negotiations on a wage reopener only clause in the contract. There the court held that the dispute which arose out of the strike settlement was a proper subject of arbitration *under the collective bargaining agreement between the parties*. In the *Ferrand* case a strike occurred over a seniority dispute during the term of a collective bargaining contract. The representative of the employees settled this dispute and the suit was for injunction for the violation of a no-strike clause in *the collective bargaining agreement*.

CONCLUSION.

The decisions of the lower courts were, we assert, in harmony with the letter and intent of the Labor-Management Relations Act and consistent with the purpose of the original understanding of the terms upon which the strike against Lasalle's was terminated. Therefore the judgment of the lower courts *should be affirmed*.

Respectfully submitted,

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MERRITT W. GREEN
and
MERRITT W. GREEN, II,
Attorneys for Respondent.

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IN THE

Supreme Court of the United States

October Term, 1941

No. 72

Ernest Cohen, International Association, Local Union Nos. 138 and 66, Petitioners,

v.

Lone Star Cement Corp., Inc., and Lehigh's Division of E. H. Vogt & Co., Respondents.

MOTION TO ADD AS RESPONDENT PARTY AND SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 73

RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL UNIONS NOS. 128 AND 633, *Petitioners*,

v.

LION DRY GOODS, INC., AND LASALLE'S DIVISION OF R. H. MACY & CO., *Respondents*.

MOTION TO ADD OR SUBSTITUTE PARTY PETITIONER AND STATEMENT IN OPPOSITION TO THE SUGGESTION OF MOOTNESS

To the Honorable, the Justices of the Supreme Court of the United States:

Petitioners respectfully move the court to add or substitute as a party Petitioner in this Court the following party: Retail Clerks International Association, Local 954. In suport of this motion, Petitioners show as follows:

1. In the Brief for Respondents, it is stated that the present Petitioners have "merged" with the aforementioned Local 954. Respondents suggest that this cause may have abated or become moot as a consequence of this merger.

2. It is true that the Petitioners herein have "merged" with Local 954 of the same International Union. Local 954 is not a "new" organization but was a pre-existing organization which assumed all the rights and obligations of the named Petitioners herein.

3. The "merger" of these local labor organizations occurred in January, 1960, after the institution of the action but before formal entry of judgment by the District Court.

4. The "merger" was unanimously approved by the memberships of the local unions, in accordance with applicable provisions of their by-laws and the constitution of their parent labor organization, Retail Clerks International Association.

5. The Petitioners before the Court continue to function as separate divisions of Local 954, and these divisions retain the same physical offices as well as the same officers, representatives and employees which they had before the merger. They hold separate meetings of their memberships, as they did before the merger, and each division conducts its own affairs.

6. This litigation is still very much alive and vital. Indeed, Local 954 has financed and prosecuted this litigation through the District Court, the Court of Appeals and in this Court on behalf of its divisions. All other contract rights and obligations of the present Petitioners have been assumed and prosecuted in the name of Local 954 without interruption.

7. The Petitioners before the Court and Local 954 functioned jointly as a "Council" before the merger, and they now function as a single local labor organization. The present Petitioners have not ceased to exist or to function. They have merely changed their formal

names and merged their rights and obligations for the purpose of operating more effectively.

8. As a practical matter, the present Petitioners continue to function largely as they have in the past.

9. If the Court reverses the judgment of the Court below, Local 954 intends to prosecute the action to a conclusion before the District Court.

10. Counsel apologize to the Court for having failed to file this motion at an earlier date, but they had intended to respond to this question in a Reply Brief, until they were advised by the Clerk that better procedure required the filing of this Motion.

11. Washington counsel, who have had principal responsibility for the appeal in this Court, express their sincere regrets to the Court for having not acted earlier to remedy this matter. However, they were unaware of the merger until it was called to their attention by Respondent's Brief.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF MOTION TO ADD OR SUBSTITUTE PARTY PETITIONER AND IN OPPOSITION TO THE SUGGESTION OF MOOTNESS

The present appeal is very much alive. As suggested in the motion above, the present Petitioners exist and function as separate divisions of Local 954. All legal rights and duties of the Petitioners have been fully assumed in the name of Local 954. As a practical matter, the merger was a technical, organizational change which in no way affected the vitality of the substantive issues before the Court. Parenthetically, we point out that Respondents' suggestion of mootness merely asserts that the aforementioned "merger" occurred, not that the litigation before the Court has abated in any practical sense.

A recent decision of the Court deals with this question and squarely holds that a "merger" of two labor organizations does not abate or make moot an appeal in this Court. *Labor Board v. Insurance Agents International Union, AFL-CIO,* 361 U.S. 872 (1959). There a labor organization, respondent in this Court, filed a statement suggesting mootness because it had merged with another pre-existing labor organization to form a single, new organization. It also filed a contingent motion to delete itself, the old labor organization, as a respondent before the Court. The petitioner, Labor Board, filed a counter-motion to add the new, "merged" labor organization as a party respondent. Dismissing the contentions of mootness and abatement, the Court said, 361 U.S. at 872, as follows:

> "The contentions raised by respondent's memorandum respecting abatement or mootness are overruled. . . . Consideration of petitioner's motion to join Insurance Workers International

> Union, AFL-CIO, and respondent's contingent motion to delete it as a party are postponed to the hearing of the case on the merits."

Having disposed of the mootness suggestion in the above-quoted order, the Court disposed of respondent's contingent motion to delete itself and the Labor Board's motion to add the merged organization in a footnote to the decision on the merits. *Labor Board* v. *Insurance Agents International Union, AFL-CIO,* 361 U.S. 477, 500, footnote #32 (1960).

> "After we granted certiorari, we postponed to the consideration of the case on the merits a motion by the Board to join as a party here Insurance Workers International Union, AFL-CIO, the style of a new union formed by merger of respondent and another union after the decision of this case in the Court of Appeals, and a contingent motion by respondent that it be deleted as a party. 361 U.S. 872. In the light of our ruling on the merits, there is little point in determining here and now what the legal status of the predecessor and successor union is, and if the issue ever becomes important, we think that the matter is best decided then. For what it is worth, we shall treat both as parties before us in this proceeding. The Board's motion is granted and respondent's is denied. See National Labor Relations Board v. Lion Oil Co., 352 U.S. 282."

In the *Lion Oil Co.* case, cited in the Court's decision above, the Monsanto Chemical Co. acquired all the rights and interests of respondent Lion Oil Co. while the case was pending review by the Court. On a joint motion by the petitioner and respondent, the Court granted the motion to add Monsanto Chemical Co. as a party respondent. 351 U.S. at 979.

In the case at bar, the present Petitioners have affiliated themselves with Local 954 but have retained separate, distinct and identifiable status within Local 954. Whether the relationship is technically one of merger, consolidation or amalgamation is, we believe, unimportant. What is important is the undisputed fact that the present litigation is very much alive. The rights and interests contested in the Court have not abated as a consequence of the technical change in the present Petitioners' legal status.

In the labor relations field, consolidations and mergers of labor organizations are commonplace. The National Labor Relations Board regularly authorizes successor labor organizations to assume the outstanding bargaining rights of predecessor organizations. The leading decision of the Board is *National Carbon Co.*, 116 NLRB 488 (1956), which authorized a merged labor organization to succeed to the certification and bargaining rights of a predecessor under certain conditions which are present in the case at bar. This decision was enforced by the Sixth Circuit, *Union Carbide & Corbon Co.* v. *Labor Board*, 244 F.2d 672 (6th Cir. 1957), and has been constantly cited as the leading NLRB decision on this question. See also Silverberg, How To Take A Case Before The National Labor Relations Board 176-177 (Rev. ed. 1959).

For the reasons stated herein and in the foregoing motion, it is respectfully submitted that Petitioners' Motion to Add or Substitute should be granted, and Respondent's suggestion of mootness or abatement

should be overruled. *Labor Board* v. *Insurance Agents International Union, AFL-CIO*, 361 U.S. 872 (1959).

Respectfully submitted,

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In the Supreme Court of the United States

[redacted]

[redacted]

Petitioners,

vs.

[redacted]

and

[redacted]

Respondents.

[redacted]

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In the Supreme Court of the United States

OCTOBER TERM, 1961.

No. 73.

RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL UNIONS NOS. 128 and 633,

Petitioners,

vs.

LION DRY GOODS, INC.,

and

LASALLE'S DIVISION OF R. H. MACY & CO.,

Respondents.

RESPONDENTS' MEMORANDUM IN RE: APPELLANTS' MOTION TO SUBSTITUTE PARTIES.

The Respondents in their brief filed in this Court suggested that this case might have become moot by reason of the fact that the appellant unions ceased to exist as of December 31, 1959.

This disclosure was made in a note which was a part of the Labor Organization Financial Report filed by each of the appellant unions with the United States Department of Labor on or about the 18th day of March, 1960, Labor Department file numbers 052080, 052082.

This note said:

"As of January 1, 1960 this Local merged with Locals 633 and 954 and District Council No. 6 to form a new Local 954."

The note concerning Local 633 read as follows:

"As of January 1, 1960 this Local merged with Locals 128 and 954 and District Council No. 6 to form a new Local 954."

This same information was contained in the report filed by Local 954 which became Labor Department file number 052081.

We are unable to comment on much of the information contained in the motion of the appellants for lack of information or knowledge. The information contained herein is revealed by a study of the aforementioned reports filed with the Department of Labor, plus the report filed by the new Local, Local 954, on or about March 23, 1961.

Because of the peculiar nature of the litigation before the Court and the unusual fact situation, the right of Local 954 of Retail Clerks International Association, AFL-CIO, to be substituted as the appellant in this case is of critical importance.

We say it is of critical importance because if the Court should rule that the statement of understanding given to the Toledo Labor-Management Citizens Committee by the Respondents here setting forth therein their understanding of the basis on which a strike carried on by the employees of the Lasalle & Koch Company was terminated, created a contractual relationship between both Lasalle's and The Lion Dry Goods Company, Respondents, and the Union to which some of its employees belonged, the Respondent stores will be forced to deal with an entirely new and different entity.

While there are several cases dealing with the obligation of an employer to deal with successor and/or merged unions, those we have been able to study deal with unions previously certified as the bargaining agent for the employees or unions holding contracts with the employers at the time the changes were made.

We have not been able to find any case dealing with a situation parallel to the one involved in this case, i.e.,

where a union which is admittedly not the majority representative of the employees and which admittedly does not claim to represent the majority of the employees, ceases to exist by reason of being merged into a new Local created out of four separate labor organizations.

In *National Labor Relations Board v. Insurance Agents' International Union, AFL-CIO* (1960) 361 U. S. 477, the question of substitution of parties was suggested by a motion filed by the Board inasmuch as a new union had been formed by merger of the respondent and another union after the decision of the Court of Appeals. The respondent union also filed a motion asking to be deleted as a party. However, the Court did not make any determination of the legal status of either the predecessor or successor union. In footnote 32 the Court said:

> "In the light of our ruling on the merits, there is little point in determining here and now what the legal status of the predecessor and successor union is, and if the issue ever becomes important, we think that the matter is best decided then."

The *Insurance Agents'* case, *supra*, arose out of tactics used by the union during contract negotiations for a new contract to replace one that was expiring. There, then, the contractual relationship was already in existence.

It would seem that the important point for consideration here is not only whether the entity is changed by the new union which arises out of the merger, but whether the composition of what makes up the new union is different than the two Locals which went out of existence when the new Local was formed.

Various criteria considered important can be gleaned from the relatively few cases we have been able to examine on short notice. For instance, in *Dickey, et al. v.*

National Labor Relations Board, et al., 217 F. (2d) 652 (C. A. 6, 1954) where the Regional Director of the Board substituted one union in place of another union that had filed unfair labor practice charges against the employer, the Court found that the merger resulted in a different organization.

In that case Blacksmiths, the certified union, merged with the Boilermakers, forming a new union. One of the defects found by the Court of Appeals in the attempt to substitute, in addition to the fact that it resulted in a different organization, was that the members of the certified unit constituted only a fraction of the merged group and had no control over it.

This question of merger or change of identity also came up in *Continental Oil Co. v. National Labor Relations Board*, 113 F. (2d) 473 (C. A. 10, 1940). There the Court held that the employer should bargain with the new union because there had been no change in officers; the change was only in name; and continuity of organization was preserved; and that the designations of new names and contracts submitted and other efforts to bargain collectively were made and exerted before the change in name and were therefore in the original name of the union. The change really was a change in affiliation from A. F. of L. to C. I. O.

In *National Labor Relations Board v. Harris-Woodson Co., Inc.*, 179 F. (2d) 720 (C. A. 4, 1950) the question was raised whether the employer was required to bargain with a local union after it changed its affiliation from the C. I. O. to the Textile Workers Union. In doing so it changed its name to United Candy Workers of Lynchburg.

The Court held that the employer should bargain with the union largely on the basis of the findings made by the Board that the change in name and affiliation were of no

consequence. The Board found that continuity of organization had been preserved in view of the fact that the great bulk of the membership was the same before and after the change in name and affiliation and it further found that the officers were the same. The Board concluded that the composition of the union, for purposes of bargaining with the employer, was the same labor organization.

In *Union Carbide & Carbon Corporation v. National Labor Relations Board*, 224 F. (2d) 672 (C. A. 6, 1957), the Court approved the action of the Board in substituting one union for another during an unfair labor practice proceedings against the employer, holding that this was permissible because there were no changes in membership or officers of the Local, or in its day-to-day relationships with the company.

From the reports filed by the various labor organizations out of which the new Local 954 was created, it is apparent that the membership is quite different, so far as it relates to 633 and 128; the organization is new and different in size and structure; the officers are different; the members of 633 and 128 appear to make up only a minor portion of the membership.

In addition to these material changes, historically and factually Local 954, prior to the creation of the new union, was made up of employees of the retail food industry. By this we mean employees of super-markets. Local 633's membership consisted of straight commission sales people employed in department and furniture stores. These people are known in the retail industry as "big ticket" sales people, selling furniture, rugs and major appliances.

The membership of Local 128 was drawn, in the main, from selling and non-selling employees of department and variety stores.

On the basis of the financial reports filed, during the year ending December 31, 1959 dues from the membership of Local 954 amounted to $92,297.35. Dues from the membership of Local 633 during the same period amounted to $4,088.50, while dues from the membership of Local 128 for the same period amounted to $27,667.00.

From these figures, then, it would appear that prior to the formation of the new Local, the combined Locals 633 and 128 were one-third of the strength of Local 954, measured in terms of dues paid by members. We use this measuring stick on the assumption that the total payment of dues accurately reflects the relative membership of the various unions.

For the same period, 1959, the per capita tax paid by each of the Locals reflects the same relative membership. Local 954, for instance, paid $28,691.00 in per capita payments to the International, while the two Locals combined paid slightly over $10,000.00 in per capita payments to the International.

The reliability of these membership figures as deduced from the financial report seems to be borne out by the financial report filed with the Department of Labor by the new Local 954 in March of 1961. The dues collected by Local 954 during the year of 1960 amounted to $126,353.00 which compares with approximately $123,500.00 in membership dues collected by all of the Locals in 1959.

The combined payment of per capita tax by the three Locals in 1959 was relatively the same as paid by the new Local in 1960.

As we have already indicated, these figures are used in trying to arrive at the relative membership strength of the three Locals only because no other information is available to us for that purpose.

The officers of Local 633, one of the appellants here, were:

Clement Walter
Bernard Mehen
Burton Knisley
Paul E. Thielen
Richard P. Mehen.

The officers of Local 128, the other appellant here, were:

Ruth Wright
Irene Tobak
Belle Drake
Thelma Haas
Ada H. Long.

The officers of the new Local 954 are:

Hugh A. Nicholas
Elden T. Leedy
Ada H. Long
Ruth Wright
Gertrude Juergins
Dorothy Smithers.

The appellants suggest in their memorandum that the components of old Locals 633 and 128 are separated into divisions within the new Local 954 and as such, retain their same officers and employees and that each conducts its own affairs. We submit that by reason of the Labor-Management Reporting and Disclosure Act of 1959 such groupings within the Local would be labor organizations as defined in Section 3 of that Act. This would require the separate divisions within Local 954 to file reports with the Secretary of Labor. This is not done and has not been done.

In fact, Local 954 has recently petitioned the National Labor Relations Board asking that it hold a representation

election among the employees of Lasalle's, one of the Respondents herein. The election among the employees has been set for December 21, 1961. That petition was filed by Local 954, not by any subdivision of Local 954 which consists of department store employees only.

The very filing of a representation petition by Local 954 for an election among the employees of Lasalle's, we suggest, makes the suggestion of mootness all the more germane, particularly in view of the peculiar factual situation involved in the only issue before the Court: whether the statement of understanding given by the Respondents to the Toledo Labor-Management Citizens Committee is a Section 301 contract enforceable, if substitution of parties were to be permitted, by Local 954.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 73

RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL UNIONS NOS. 128 AND 633, *Petitioners*,

v.

LION DRY GOODS, INC., ET AL., *Respondents*.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

I. RESPONDENTS' BRIEF ATTEMPTS TO IGNORE THE BASIC ISSUE IN THIS CASE AND TO AVOID THE FACTS IN THE RECORD.

Respondents' brief strenuously attempts to avoid mentioning a most critical fact. This action was instituted to compel specific performance of two arbitration awards (R. 7-8), rendered pursuant to an agreement that such awards were to be "final and binding" (R. 10). Not only were Respondents represented by counsel in the arbitration proceeding itself (R. 40), but Respondents even petitioned the arbitration panel to reconsider its decision (R. 35).

Respondents' brief is quite misleading, therefore, where it asserts that the instant suit was brought because the stores had denied union organizers access to the employees' cafeteria and because the stores had refused to restore two former strikers to the jobs they had held before the strike (Respondents' Br. 11). The fact is that these were grievances which had been carefully processed and formally arbitrated under the grievance machinery of the Statements of Understanding (R. 6). Only *after* these two awards had been rendered against Respondents and *after* this action was instituted in the District Court did Respondents "deny that there is in existence any contract" between the parties (R. 27).

Three pages of Respondents' brief are devoted to discussion of a stipulation between counsel in the District Court which states that "plaintiff unions and the defendants, individually, had not engaged in collective bargaining . . ." (R. 40-41). What Respondents' brief totally ignores is the last sentence of the same paragraph of the stipulation which provides that (R. 41):

> "Nothing in this paragraph is to preclude the Court from finding that the settlement of December 24, 1958, was a collective bargaining agreement."

While superficially these two parts of the stipulation may appear to be inconsistent, the key to their meaning lies in the phrase "individually." Although the Respondents may not "individually" have engaged in collective bargaining with the unions, they surely have engaged in collective bargaining "jointly," through the employer association known as Retail Associates, Inc., "comprised of four downtown department stores

in Toledo, Ohio" (R. 44). Multiple employer bargaining was the pattern in Toledo for many years. Whether bargaining was conducted between the stores "individually" and the unions, or between the stores acting jointly and the unions, is quite immaterial. The significant and unambiguous feature of this stipulation is the provision that it was not intended to preclude the Court from finding that the Statement of Understanding, which settled the strike, "was a collective bargaining agreement" (R. 41). This provision of the stipulation has been completely ignored by Respondents in their brief.

Moreover, the terms and conditions of employment specified in Exhibit "B" to the complaint (R. 9-29) are based on pre-existing terms and conditions of employment, some of which had been formally negotiated between the unions and the employer association (R. 30, 34). The stipulation's meaning, however obscure, surely does not suggest that the Statements of Understanding in their totality were not the product of collective bargaining. An agreement not "to reduce rates of pay presently in effect" (R. 9, 32), where benefits and rates of pay are spelled out in great detail (R. 11-29), surely is collective bargaining in the very same sense that negotiating a totally new contract would be. Thus, it is true, as the stipulation says, that the specific wages, hours and working conditions were not "bargained for" in the usual sense, because pre-existing conditions were simply incorporated verbatim into the Statements of Understanding. This fact, the parties agreed, was not to "preclude the Court from finding that the settlement of December 24, 1958, was a collective bargaining agreement" (R. 41).

There is nothing in the record to suggest that *in fact* the Statements of Understanding are not collective bargaining agreements. A contract between a labor organization and an employer respecting working conditions surely is a collective bargaining agreement.[1] Petitioners admittedly are labor organizations, and Respondents admittedly are employers. The Statements of Understanding which settled the strike plainly provide for wages, hours and working conditions. The fact that they settled the strikes does not mean that they are not *also* collective bargaining agreements.

Respondents also argue that there were no contractual relations between the stores and the unions because the Statements of Understanding were formally submitted to the Labor-Management Citizens' Committee, a mediation agency (Respondents' Br. 7-8, 27-28). Under an argument headed "Stores' Understanding with L-M-C," Respondents assert that contract relations, if any, were between the employers and the mediation agency (Respondents' Br. 7). This is utter nonsense. The mediation agency was not a party to the dispute and was not a contracting party. It merely lent its offices to help resolve the dispute between the parties through an honorable agreement in a way which permitted both sides to "save face." What a disastrous blow it would be to labor relations in America if contracts cannot be enforced where they are proposed by or submitted to mediation agencies. In any event,

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[1] J. I. Case Co. v. Labor Board, 321 U.S. 332 (1944). There the Court said, at 334-335: "Contract in labor law is a term the implications of which must be determined from the connection in which it appears. Collective bargaining between employer and the representatives of a unit . . . results in an accord as to terms which will govern hiring and work and pay in that unit."

these Statements of Understanding show on their face that they were submitted by the employers "subject to and conditioned upon the receipt . . . of guarantees from the respective labor organizations to make the principles enumerated herein completely effective" (R. 8, 31). The legal consideration for these Statements was the unions' "guarantees" to end all striking, picketing, boycotting, to withdraw all litigation and to withdraw recognition claims (R. 10, 33). Petitioners and Respondents even agreed in these Statements to "execute mutually satisfactory releases" (R. 10, 33). All of these conditions admittedly were performed by Petitioners.

II. RESPONDENTS' ARGUMENTS BASED ON THE LEGISLATIVE HISTORY ARE IRRELEVANT TO THE ISSUES IN THIS CASE. THEY IGNORE THE LANGUAGE AND THE POLICY OF THE ACT.

Respondents' brief contains many repetitious quotations from the legislative history of Section 301(a), where the phrase "collective bargaining" contract was used, seeking thereby to show that the phrase "contracts" means only "collective bargaining" contracts (Respondents' Br. 20-26). This argument is a *non-sequitur*, unless one concludes that the Statements of Understanding are not "collective bargaining" contracts. As suggested above and in our opening brief, these Statements are "collective bargaining agreements" in every meaningful sense. In any event, Section 301 itself is not limited to "collective bargaining" contracts. By plain and unambiguous terms, it provides simply for the enforcement of "contracts."

Our opening brief pointed out in detail that there are twenty categories of working conditions guaranteed by these Statements of Understanding, ranging from

minimum wages to seniority protections (Opening Br. 5). That these provisions were incorporated into an agreement which *also* settled a strike does not mean that such an agreement is not a "collective bargaining agreement" as well as a "strike settlement" agreement.

Respondents' brief points to no legislative history and sets forth no policy considerations to show that Congress intended to make contracts, which contain the substantive provisions of the present contracts, unenforceable in the federal courts.

Respondents' entire argument is based on the assumption that a "strike settlement" agreement is one kind of legal creature, that a "collective bargaining" agreement is a different kind, and that these two are mutually exclusive. The District Court and the Court of Appeals for the Sixth Circuit—without any discussion or consideration of the differences between "strike settlement" and "collective bargaining" agreements—adopted this artificial distinction and applied it mechanically to the facts of this case. Whether the substantive terms of the instant contracts are the kinds of terms which are the essence of "collective bargaining" contracts is a question which the lower courts and Respondents here have simply ignored.

In our opening brief, we relied on decisions of this Court and language in the Act itself which show that Section 301(a) expresses a "policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way." *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 455 (1957). Our opening brief suggested that denial of enforcement to contracts such as these Statements of Understanding may mean that they are unenforceable in any courts, state or

federal, and that unions would be required to engage in strikes and other hostile, economic acts to secure their enforcement. Respondents' answer to these arguments has been to ignore them.

Respondents even fail to explain why they entered into the Statements of Understanding, if they were not intended to have legal significance. Respondents' position here suggests that the strike, picketing, and boycott were terminated by the union for no particular reason and that the employers set forth detailed wages, hours and working conditions in writing, subject to "final and binding" arbitration, without any obligation to comply with the contract or arbitration awards rendered pursuant thereto. In fact, however, these employers agreed to the "arbitral process which substitutes a regime of peaceful settlement for the older regime of industrial conflict," *United Steelworkers* v. *American Manufacturing Co.*, 363 U.S. 565 (1960), but, once the industrial conflict ended, these employers refused to abide by the results of the arbitral process.

There is nothing in the legislative history of Section 301 which would countenance such a flagrant disregard of solemn contract commitments. Although the legislative history of Section 301 reveals casual references to the phrase "collective bargaining" contracts, nothing appears in this history to show that legislators used the phrase "collective bargaining" contract in the rigid and narrow sense advocated by the Respondents here. On the contrary, as Archibald Cox has said, Section 301 was broadly designed to prevent a "company or union with overwhelming economic power and few scruples from violating its contract obligations." Cox, Reflections upon Labor Arbitration, 72 Harv. L. Rev. 1482, 1485 (1959).

III. RESPONDENTS' ARGUMENT THAT THE CONTRACT IN THIS CASE IS ANALOGOUS TO THE CONTRACT IN LADIES' GARMENT WORKERS v. LABOR BOARD IS A FAULTY ANALYSIS OF THIS COURT'S HOLDING AND A MISCONCEPTION OF APPLICABLE LAW.

By a process of twisted reasoning, Respondents argue that the Statements of Understanding cannot be enforced under Section 301(a) because to do so would "result in bringing into existence the exact situation condemned in the *Ladies' Garment Workers' Union Case*," 366 U.S. 731 (1961) (Respondents' Br. 32). Respondents contend that enforcement of the Statements of Understanding "would give these minority labor organizations representation rights for *all* of the employees of the stores, contrary to the rights guaranteed by Section 7 of the Act" (Respondents' Br. 31). This argument, we believe, is completely specious.

Garment Workers, supra, was an unfair labor practice case which came to this Court to review a Labor Board determination that the parties' conduct constituted an unfair labor practice under the National Labor Relations Act. This is an action for enforcement of contract rights, which Congress has "left to the usual processes of the law and not to the National Labor Relations Board." H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess., p. 42, cited in *Textile Workers* v. *Lincoln Mills, supra*, at 915-916. As the Fifth Circuit has said in a recent decision, "enforcement of a contract to arbitrate is different from an adjudication of an unfair labor practice by the National Labor Relations Board," for the "United States district courts have the unequivocal statutory power to decree specific performance of collective bargaining contracts to arbitrate." *Lodge No. 12, Machinists* v. *Cameron Iron Works*, 257 F. 2d 467 (5th Cir. 1958); cert. den. 358

U.S. 880 (1958). In the instant case there has been no determination of any kind by the Labor Board that any conduct of any of the parties has been unlawful. Respondents' suggestion that enforcement of these Statements of Understanding would be against public policy is, in a word, frivolous. It would be a strange public policy, indeed, which would prohibit the settlement of a bitter, year-long labor dispute under the terms of an honorable, written agreement.

This Court has said over and over again that primary jurisdiction to determine and remedy alleged unfair labor practices lies with the Board, not with the courts. *San Diego Building and Construction Trades* v. *Garmon*, 359 U.S. 236, 244-245 (1959). Notwithstanding the Court's clear holdings, Respondents are suggesting that the Court should determine in the first instance that the execution of the Statements of Understanding constituted an unfair labor practice and that, therefore, they are unenforceable under Section 301.

Even aside from the fact that *Garment Workers* involved a Labor Board determination of unfair labor practices, decided under a different statute and under totally different criteria, the facts in that case are critically different from the facts here. In *Garment Workers*, the Labor Board found that the union had committed an unfair labor practice by seeking and accepting "*exclusive recognition*" at a time when it did not represent a majority of the employer's employees. This Court, affirming the Board's order, said that "the exclusive representation provision is the vice in the agreement." At 1607 of 18 S. Ct. In this case, however, the unions do not have "exclusive representation" rights. On the contrary, the Statements of Understanding specifically provide that the unions will not

request and the employers will not grant any "bargaining rights" until the unions are formally certified by the NLRB (R. 10, 32):

> "The Union agrees that it will not request bargaining rights unless it proves its rights to represent the employees as provided in Paragraph 5 above; nor will the employer recognize any union except upon certification by the NLRB . . . ."

Under these Statements, the unions do not even have the right to process grievances, only "individual employees" have this right (R. 10, 32-33). Plainly, however, the unions may represent individual employees who desire the unions to represent them in the arbitral process. As a matter of fact, therefore, even the contract in this case is totally different from the contract in *Garment Workers*.

Of course, the complaint in this case does not seek enforcement of the Statements of Understanding as such, only enforcement of two arbitration awards. In *United Steelworkers* v. *American Manufacturing Co.*, 363 U.S. 564, 570 (1960), the Court said that "the arbitration promise is itself a contract." Therefore, quite aside from the Statements of Understanding, the executed promise to arbitrate is also enforceable. It is unthinkable that enforcement of these arbitration awards would constitute a violation of employees' Section 7 rights to select a bargaining agent which was the violation found by the Board in the *Garment Workers'* case. These arbitration awards deal only with the job assignments of two former strikers and the right of the unions to communicate with employees in the stores' cafeterias. Moreover, it ill-becomes these employers to assert that the awards are unenforceable by attacking the Statements of Understanding because

these employers have already enjoyed the full fruits and benefits of these Statements in securing the settlement of a long and bitter economic dispute.

Finally, if there is any conceivable doubt about the legality of the Statements of Understanding, it is eliminated by this Court's decision in *Local Lodge 1424, Machinists* v. *Labor Board*, 362 U.S. 411 (1960). The Court there held that execution of a contract with a minority union may not be invalidated by the Board in an unfair labor practice proceeding, where charges are filed with the Board more than six months after the contract's execution. Concluding that Section 10(b) of the Taft-Hartley Act, 61 Stat. 146 (1947), 29 U.S.C. Section 160(b), is a statute of limitations for alleged unfair labor practices, the Court held that the Board erred in condemning the execution of a union security contract with a minority union, where unfair labor practice charges were filed more than six months after the execution. The Statements of Understanding in this case were executed in December of 1958 (R. 8, 31), three years ago. Therefore, because no unfair labor practice charges have ever been filed here, Respondents' argument based on the *Garment Workers'* case is without merit.

IV. RESPONDENTS' MOOTNESS CONTENTIONS ARE PLAINLY WITHOUT MERIT.

Respondents suggest, for the first time, that this cause may have become moot by virtue of the fact that Petitioners merged with another local union affiliated with the same parent body in January of 1960 (Respondents' Br. 17). As pointed out in our Motion to Add or Substitute Party Petitioner, this cause has not become moot in any practical or legal sense. The

merger was purely an internal, organizational change which did not affect outstanding legal rights and duties. This Court has ruled against such mootness contentions in almost identical circumstances. *Labor Board* v. *Insurance Agents International Union AFL-CIO*, 361 U.S. 872 (1959); *DeVeau* v. *Braisted*, 363 U.S. 144, 146 (1960).

V. CONCLUSION

The judgments of the Court of Appeals for the Sixth Circuit should be reversed.

Respectfully submitted,

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